

(27,063 AND 27,064)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 977.

CHARLES GLEN COLLINS, APPELLANT,

vs.

FRANK M. MILLER, U. S. MARSHAL FOR THE EASTERN
DISTRICT OF LOUISIANA.

No. 978.

TOM F. CARLISLE, BRITISH CONSUL GENERAL,
APPELLANT,

vs.

CHARLES GLEN COLLINS.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA.

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a UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana,
New Orleans Division.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS, Appellant,
versus

FRANK M. MILLER, United States Marshal, Appellee.

J. Zach Spearing, Esquire, for Appellant.
Robert H. Marr, Esquire, for Appellee.

Appeal from the District Court of the United States for the Eastern
District of Louisiana, New Orleans Division, to the Supreme Court
of the United States, Returnable within Thirty (30) Days from
the Eighth (8th) Day of March, 1919, at the City of Washington,
D. C.

1 *Petition.*

Filed January 8, 1919.

In the United States District Court for the Eastern District of
Louisiana.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs
of Habeas Corpus and Certiorari.

To the United States District Court for the Eastern District of
Louisiana:

The petition of Charles Glen Collins respectfully represents and
shows to this Honorable Court, as follows:

1. Your petitioner is imprisoned and restrained of his liberty in
the House of Detention in the City of New Orleans, in the State
of Louisiana, in the custody of Frank M. Miller, United States
Marshal for the Eastern District of Louisiana, by virtue of two cer-
tain warrants dated the 31st day of October, 1918 and the 21st day
of November, 1918, respectively, issued by Honorable Rufus E.
Foster, United States District Judge for the Eastern District of
Louisiana, copies of which warrants are hereto annexed, marked,
respectively, "Exhibit A" and "Exhibit B," and made a part hereof.

2. On the 12th. day of November, 1917, your petitioner was ar-
rested and taken into custody by the said Frank M. Miller, United
States Marshal for the Eastern District of Louisiana, under and by

virtue of a warrant dated the 5th. day of November, 1917, issued by Honorable Sam M. Hitchcock, United States Commissioner for Southern District of New York, a copy of which warrant is also hereto annexed, marked "Exhibit C," and made a part hereof.

2. 3. The said last mentioned warrant was issued by the said Commissioner upon a complaint purporting to have been made by C. Olive Bayley, Esquire, British Consul-General at the City of New York in the State of New York, before the said Commissioner, a copy of which complaint is also hereto annexed, marked "Exhibit D" and made a part hereof.

4. On the 18th day of October 1918, your petitioner was arrested and taken into custody by the said United States Marshal for the Eastern District of Louisiana, under and by virtue of a warrant dated the 18th. day of October 1918, issued by Honorable Rufus E. Foster, United States Judge for the Eastern District of Louisiana, a copy of which warrant is also hereto annexed, marked "Exhibit E," and made a part hereof.

5. The said last mentioned warrant was issued by the said Judge upon a complaint purporting to have been made by Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans in the State of Louisiana, before the said Judge, a copy of which complaint is also hereto annexed, marked "Exhibit F," and made a part hereof.

6. On the 18th. day of October, 1918 and again on the 8th. day of November 1918, your petitioner was arrested and taken into custody by the said United States Marshal under and by virtue of two warrants dated the 18th. day of October 1918 and the 8th. day of November 1918 respectively, issued by Honorable Rufus E. Foster, United States Judge for the Eastern District of Louisiana, a copy of which warrants are also annexed hereto, marked "Exhibit C," and made a part hereof.

3. 7. The last mentioned warrant was issued by the said Judge, upon complaints purporting to have been made by Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans in the State of Louisiana, before the said Commissioner, a copy of which complaints are also hereto annexed, marked "Exhibit H," and made a part hereof.

8. On the 28th. day of October 1918, your petitioner was arraigned before the Honorable Rufus E. Foster, one of the Judges of this Court, and after a hearing held on the 28th. day of October 1918, and the 30th. day of October, 1918, was remanded to the custody of the said Marshal to await the action of the Secretary of State of the United States in the premises, and the said Honorable Rufus E. Foster then and there issued his warrant (Exhibit A) therefor to the said Marshal, and certified the evidence and the testimony taken before him to the said Secretary of State, and on the same day the said Marshal placed your petitioner in the custody of the Warden of the House of Detention in the City of New Orleans, in the State of Louisiana, where your petitioner now is.

9. On the 21st day of November, 1918, your petitioner was again arraigned before the Honorable Rufus E. Foster, one of the Judges

of this Court, and after a further hearing held on the 21st day of November, 1918, was remanded to the custody of the said Marshal to await the action of the Secretary of State of the United States in the premises, and the said Honorable Rufus E. Foster then 4 and there issued his warrant (Exhibit B) therefor, to the said Marshal, and certified the evidence and the testimony taken before him to the said Secretary of State, and on the same day the said Marshal placed your petitioner in the custody of the Warden of the House of Detention in the City of New Orleans, in the State of Louisiana, where your petitioner now is.

10. Your petitioner's detention and imprisonment is illegal and unconstitutional, because:

(a) The aforesaid complaints are based upon certain Informations filed against your petitioner before the Esplanade Police Court of Bombay, India, charging your petitioner with having committed the offense of cheating under Section 420 of the Indian Penal Code, and that such offense is not an extraditable one under any extradition convention or treaty in force between the United States of America and the Kingdom of Great Britain.

(b) Your petitioner was denied by the Honorable Rufus E. Foster, at each of the aforesaid hearings, due process of law, in that he was denied the right and opportunity accorded him by the laws of the State of Louisiana, to make a voluntary declaration on his own behalf, and was also denied the right and opportunity accorded him by said laws to have other witnesses than himself examined upon his own behalf.

5 (c) Your petitioner was denied by the Honorable Rufus E. Foster, at each of said hearings, the right possessed by him under the Tenth Article of the Treaty between the United States of America and the Kingdom of Great Britain of August 9th, 1842, to the protection of the laws of the State of Louisiana, in which State your petitioner was arrested; and according to the laws of which State your petitioner had the right to make a voluntary declaration and to have witnesses examined in his own behalf before the committing Judge or Magistrate.

(d) Your petitioner was denied by the Honorable Rufus E. Foster, at each of said hearings, the protection of the Fifth Amendment to the Constitution of the United States of America, in that he has been deprived of liberty without due process of law, the treaty between the Kingdom of Great Britain and the United States of America expressly providing that no person shall be surrendered by either of the two Nations concerned except upon evidence of criminality "as, according to the laws of the place where the fugitive, or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed," and that according to the laws of the State of Louisiana, in which State your petitioner was arrested, as aforesaid, he was entitled to testify on his own behalf, and also was entitled to have witnesses examined in his own behalf before the committing Judge or Magistrate and that these rights were denied to your petitioner.

(e) No legal proof was submitted to, or produced before,

6 the Honorable Rufus E. Foster, of the commission by your petitioner of the crime or offense mentioned in the said complaints of Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans, or of the crime or offense mentioned in the authenticating certificates attached to the documents forwarded to this Country from Bombay, India, or mentioned in the Informations filed before the said Esplanade Police Court, of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate or the Acting Chief Presidency Magistrate of said Police Court, or of either or any of said crimes or offenses, or of any other crime or offense.

(f) No legal proof was submitted to, or produced before, the Honorable Rufus E. Foster, on which reasonable ground for a belief that your petitioner had committed the crime or offense mentioned in the said complaints of Thomas F. Carlisle, Esquire, British Consul-General at the City of New Orleans, or the crime or offense mentioned in the authenticating certificates attached to the documents forwarded to this Country from Bombay, India, or mentioned in the Informations filed before the said Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate or the Acting Chief Presidency Magistrate of said Police Court, or either or any of said crimes or offenses, or any other crime or offense, could be based.

7 (g) None of the evidence, papers and exhibits which were submitted to the Honorable Rufus E. Foster, over the objection and protest of your petitioner, were authenticated in accordance with the provisions of the statutes in such case made and provided, so as to entitle them to be received in evidence in the said proceeding.

(h) The transactions proved by the depositions that were admitted in evidence over the objection and protest of your petitioner are not criminal in their nature, according to the laws of the State of Louisiana, in which State your petitioner was arrested and they are not even criminal according to the laws of British India, but constitute commercial transactions in which credit was freely and voluntarily extended to your petitioner by each and every one of the merchants therein named.

(i) Even if said transactions are criminal according to the laws of British-India, they constitute, under said laws, the offense of cheating as prescribed by Section 420 of the Penal Code of India and the said offense is not an extraditable one under either of the three extradition treaties or conventions in force between the United States of America and the Kingdom of Great Britain.

(j) There is a fatal variance in each of the three sets of documents forwarded to this Country from Bombay, India, in that in each set of documents it appears that the charge brought against your petitioner is that of the offense of cheating under Section 420 of the Penal Code of India, while in the authenticated certificates of the Secretary for the Indian Government and of the Consul-General of the United States at Calcutta, India, the charges brought against your petitioner, are stated to have

been of an entirely different nature and character; namely, that of obtaining valuable property by false pretenses.

(k) There is a material and radical difference between the non-extraditable offense of cheating under Section 420 of the Penal Code of India, and the extraditable offense of obtaining property by false pretenses, in that the gist of the Indian offense of cheating is the failure to perform a promise of future payment where the intent not to perform is proved to have existed at the time of the making of the promise, while the gist of the extraditable offense of obtaining property by false pretenses is, according to the laws in force in the State of Louisiana, a false representation concerning a past or present fact and that a promise is not a pretense within the meaning of the Louisiana statute, even when the party making the same does not intend to keep it.

11. Your petitioner is advised and verily believes it to be true, that his imprisonment and detention aforesaid is illegal and unconstitutional and that the Honorable Rufus E. Foster was without jurisdiction to commit him to the custody of the Marshal to await the action of the Secretary of State, as aforesaid, for the reasons aforesaid, and that your petitioner has been, and is being deprived of his liberty without due process of law, in violation of the said treaty and also in violation of the Fifth Amendment to the Constitution of the United States of America.

Wherefore, in order that your petitioner may be relieved
9 of his unlawful detention and imprisonment, your petitioner
prays that writs of habeas corpus and certiorari may issue
out of this Court, directed to the person or persons having your
petitioner in custody and to the said Honorable Rufus E. Foster,
commanding them, and each of them, to produce the body of your
petitioner before this Court, and to return all the proceedings had
against him to this Court, and to do and receive what shall then
and there be considered in the matter.

No previous application has been made for the said writs.

(Signed)

J. ZACH SPEARING,

Attorney for Petitioner.

(Signed)

CHARLES GLEN COLLINS.

STATE OF LOUISIANA,

City of New Orleans, ss:

Before the subscriber, a Notary Public in and for said City and State, personally appeared Charles Glen Collins, who being duly sworn, deposes and says:

That he is the petitioner herein; that he has read, and knows the contents of the foregoing petition, and that the same is true of his own knowledge, except as to the matter therein stated to be alleged upon information and belief, and as to that matter he believes it to be true.

(Signed)

CHARLES GLEN COLLINS.

Sworn to before me, this 27th day of December, 1918.

[SEAL.] (Signed) J. ZACH SPEARING,
Notary Public.

To the Clerk:

Let a writ issue as prayed for, returnable Saturday, January 11th, at 10 A. M.

Given this 8th day of January, 1919.

(Signed) W. I. GRUBB,
District Judge.

10

Writ of Habeas Corpus.

Issued January 8, 1919.

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

FRANK M. MILLER, U. S. Marshal.

The President of the United States to Frank M. Miller, United States Marshal for the Eastern District of Louisiana, Greeting:

You are hereby commanded to bring and produce before this Court on Saturday, the 11th day of January 1919, at 10 a. m. the body of Charles Glen Collins, now in your custody in the House of Detention in the City of New Orleans, together with the cause of his caption and detention; there to abide what shall be awarded by the Court in the premises, and herein fail not under penalty of the law.

Witness, the Honorable Rufus D. Foster, Judge of said Court, at New Orleans, La., this 8th day of January in the year of our Lord one thousand nine hundred and nineteen.

[SEAL.] (Signed) H. J. CARTER, Clerk.

Clerk's Office.

A true copy.

(Signed)

H. J. CARTER, Clerk.

New Orleans, La., January 8, 1919.

Marshal's Return.

Filed February 10, 1919.

Received by U. S. Marshal, New Orleans, La., Jan. 8/18, and on the same day month and year I served the original of which this is a certified copy, on Frank M. Miller, United States Marshal, for the Eastern District of Louisiana, by handing same to him in person at New Orleans, La.

(Signed)

FRANK M. MILLER,
U. S. Marshal.
SAM W. TAYLOR,
Chief Deputy.

11 *Order Continuing Case Indefinitely.*

Extract from the Minutes, November Term, 1918.

New Orleans, Saturday, January 11th, 1919.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

" Hon. W. I. Grubb, Judge.

No. 15959.

UNITED STATES ex Rel. CHARLES GLEN COLLINS

vs.

FRANK M. MILLER, United States Marshal.

Proceedings Before Hon. W. I. Grubb, District Judge.

By agreement of counsel for the respective parties;

It is ordered by the Court that the application for a writ of habeas corpus fixed for trial this day, be continued indefinitely.

12 *Return of Frank M. Miller, United States Marshal.*

. Filed Feb. 15, 1919.

In the United States District Court for the Eastern District of Louisiana.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

Now, comes Frank M. Miller, United States Marshal for the Eastern District of Louisiana, who, by way of return to the writs herein applied for, says:

1.

That Charles Glen Collins is held by him in pursuance of judgments of the Honorable Rufus E. Foster, Judge of this Court, which said judgments read as follows:

"I find that the evidence produced against said Charles Glen Collins is sufficient in law to justify his commitment on charges of having obtained property by false pretenses.

It is further ordered, adjudged and decreed that said Charles Glen *Foster*, be committed to the House of Detention to be held for extradition to British India for trial on charges pending against him in the Chief Presidency Magistrate's Court at Bombay India, to abide the order of the President of the United States until the further orders of the Court."

That the said judgments were based upon findings on three separate affidavits charging said Collins with being a fugitive from the justice of India upon charges of obtaining property by false pretenses, and upon which said judgments warrants were issued and placed in the hands of your respondent, as recited by relator in his application for writs.

2.

Now, your respondent shows that the detention of relator is legal and constitutional, and respondent shows that, in each of said three cases, applications were made for the extradition of said 13 Colonel Charles Glen Collins on the ground that, in each of said cases, he stood charged in India with the crime of obtaining valuable property by false pretenses.

3.

Now, your respondent further shows that, in each of said cases, it is certified by A. H. Grant, Secretary to the Government of India in the Foreign Political Department, that the relator is:

"Charged with the crime of obtaining valuable property by false pretenses, alleged to have been committed in Bombay."

That, as to one of said charges, A. H. S. Aston, Chief Magistrate certified:

"Whereas, one Lieutenant-Colonel Charles Glen Collins stands charged with the offense of obtaining property by false pretenses under Section 420 of the Indian Penal Code, within the jurisdiction of my Court, in respect of jewelry valued at about two thousand pounds, the property of the firm of Ganeshilall & Sons, jewelers of Calcutta."

and said A. H. S. Aston, Chief Presideney Magistrate, as to another of said charges, certifies:

"Whereas, one Lieutenant-Colonel Charles Glen Collins stands charged with the offence of obtaining property by false pretenses at Bombay, under Section 420 of the Indian Penal Code, with respect

of a pearl button valued at seventeen hundred pounds, the property of Mahomed Helo Zaimel Ali Raa."

4.

And, your respondent further shows that the evidence deduced on the trial of each of these three several cases discloses a state of facts constituting crime, both under the laws of Louisiana, and under the laws of British India.

14

5.

Your respondent further shows that relator at on time offered to make any voluntary statement, but offered himself as a witness on his own behalf; and respondent shows that, in two of said cases, after having been sworn as a witness, the Judge declined to hear any evidence in defense of the charge, holding:

"No question of defense can come before this Court in an extradition matter; that is a question for the Court when the case is tried in the country that requests his extradition, the only question here is the question as to the identity of the accused, and the question whether or not he was in India at the time this alleged offence is supposed to have been committed. There are two things the defendant can show, either he is not the man wanted, or that he was not there at the time the offence is supposed to have been committed. Now, he was there at the time, and he admits he is the man."

To which ruling of the Court, Counsel for relator replied, "There is no doubt about that."

6.

And, respondent further shows that the other evidence offered by relator in his own behalf would not have been admissible, even had relator been on trial for the commission of the offence charged.

7.

And, your respondent further shows that, in the Raza case, said Collins offered himself as a witness in his own behalf and was duly sworn, examined, cross-examined and re-examined.

8.

And, your respondent further shows that the proof submitted was legal and competent, and that the sufficiency of said proof cannot be inquired into on habeas corpus.

15

9.

And, your respondent further shows that all the documents admitted in evidence by said Honorable Rufus E. Foster were authenticated, in accordance with the provision of law.

10.

And, your respondent further shows that the transactions disclosed by the evidence in each of said three several cases, constituted the obtaining of articles by false pretenses, and discloses a state of facts punishable as crime, both by the law of Louisiana and by the law of British India, as abundantly shown by the testimony of relator, examined as witness in his own behalf.

11.

And, your respondent further shows that there is no variance in the documents forwarded from Bombay, as hereinabove set out; in two of said cases, the charge is distinctly stated as that of obtaining property by false pretenses, which statement is contained both in the certificate of the Magistrate, and in the request for extradition; that, in the other of said cases, the affidavit is for cheating under the Penal Code of India, Section 420, and the request is for extradition to stand trial on a charge of obtaining by false pretenses. And, your respondent shows that, in said case last mentioned, the evidence discloses an obtaining by false pretenses.

12.

And, your respondent further shows that, in all three cases, the evidence disclosed the commission in British India of an extraditable offence.

16 Wherefore, the foregoing considered, respondent prays that the writs herein applied for be refused at relator's costs.

All other orders necessary and proper in the premises are also prayed for.

(Signed)

ROBERT H. MARR,
For Respondent.

17 *Record, Exhibits, Evidence, Testimony, and Proceedings in the Matter of the Extradition Proceedings against Charles Glen Collins, Nos. 15927, 15928, and 15936 (Consolidated), Filed February 21, 1919, before Hon. W. I. Grubb, United States District Judge.*

UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana,
New Orleans Division.

Nos. 15927, 15928, and 15936 (Consolidated).

In the Matter of Extradition Proceedings versus CHARLES GLEN COLLINS.

Record, Exhibits and Testimony Transmitted by Hon. Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana, to the Honorable Secretary of State of the United States of America, Department of State, Washington, D. C.

18 AFFIDAVITS OF COMPLAINANT, EXHIBITS, CERTIFICATES, AND DEPOSITIONS OF WITNESSES.

Affidavit of Gerard M. Loly, British Vice Consul.

Filed Oct. 16, 1918.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Gerard M. Loly, who being by me first duly sworn, deposed and said that he is British Vice Consul at the City of New Orleans; that Charles Glen Collins, having in British India committed the crime of obtaining goods by false pretenses, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 7th, 1917, fraudulently, falsely and feloniously pretended to the commercial firm of Pohoomul Bros. that he, the said Collins, was a wealthy man; that he, the said Collins, then and there had a right to draw a draft for five thousand pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London; Whereas in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary was a bankrupt; that he, the said Collins, had no right to draw a draft for five thousand pounds or for any amount on said Messrs. E. Curtice & Company; that by means of said false, fraudulent and felonious pretenses, said Collins then and there obtained from said commercial firm of Pohoomul Bros. a pearl neck-

lace, valued at seventy-five thousand rupees; of the property of the said commercial firm of Pohoomul Bros.; that the said false and fraudulent pretenses were, to the knowledge of said Collins, at the

time of making same false and fraudulent; and affiant further
19 says that said Collins is presently within the City of New

Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

Affiant further says that Thomas F. Carlisle, the British Consul General at this Port, is confined to his home by illness, and therefore cannot make this affidavit, and that affiant makes the same upon instructions received from the said Thomas F. Carlisle.

(Signed)

GERARD M. LOLY.

Sworn to and subscribed before me this 16 day of October, 1918.

(Signed)

RUFUS E. FOSTER, Judge.

20 *Affidavit of Tom F. Carlisle, British Consul General.*

Filed Oct. 26, 1918.

UNITED STATES OF AMERICA,

State of Louisiana, Parish of Orleans,

City of New Orleans:

Before me, the undersigned authority, personally came and appeared Tom F. Carlisle, who being by me first duly sworn, deposed and said that he is British Consul General at the City of New Orleans; that he is informed and being so informed, verily believes that Charles Glen Collins having committed the crime of obtaining property by false pretenses, stands charged in the Chief Presidency Magistrate's Court at Bombay, India, with having, on or about February 7th, 1917, fraudulently, feloniously and falsely pretended to the commercial firm of Pohoomul Bros. that he, the said Collins, was a wealthy man; that he, the said Collins, then and there had a right to draw a draft for Five thousand Pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London, and that in consequence thereof, said draft would be paid; Whereas, in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary, was a bankrupt; that he, the said Collins, had not the right to draw a draft for five thousand Pounds on said Messrs. E. Curtice & Company, and then and there well knew that said draft would not be paid; that by means of said false, fraudulent and felonious pretenses, the said Collins then and there obtained from said commercial firm of Pohoomul Bros. a pearl necklace valued at seventy-five thousand rupees, of the property of the said commercial firm

21 of Pohoomul Bros.; that the said false and fraudulent pretenses were, to the knowledge of said Collins at the time of making them false and fraudulent, and affiant further says that said Collins is presently within the City of New Orleans, and within the

jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further states that the source of his information and belief, upon which information and belief this affidavit is made, is as follows:

The evidence taken on said charge in the Esplanade Police Court, Bombay, duly certified to under the provisions of Section 5271 of the Revised Statutes of the United States; the evidence taken before Sir John Dickinson, Knight, Bow Street Police Court, London, duly certified to under Section 5271 of the Revised Statutes of the United States; the evidence taken before Alexander Stuart Duff Thompson, at Glasgow, salaried sheriff of the Sheriffdom of Lanarkshire, duly certified to under Section 5271 of the Revised Statutes of the United States, all of which said evidence is hereunto annexed as part hereof; and a telegram in Code from the British Secretary of State, for Foreign Affairs, received by the British Consul General at New York on November 3rd, 1917, a Code Translation whereof is hereto annexed as part hereof.

(Signed)

T. F. CARLISLE.

Sworn to and subscribed before me this 26 day of October, 1918.

(Signed)

RUFUS E. FOSTER, Judge.

22 *Translation of Telegram in Code from the British Secretary of State for Foreign Affairs, Received by the British Consul General at New York on November 3rd, 1917.*

No. 738.

Following telegram has been received from Governor of Bombay October 25th communicated by Secretary of State for India Begins. No. 8237. A warrant has been issued in this country for the arrest of the undermentioned person for the undermentioned offence. Apply for provisional arrest with a view to extradition. Necessary documents will be sent as soon as possible through regular channels. Please acknowledge receipt of this by cable and also telegraph when accused has been arrested. Charles G. Collins till recently British army officer obtaining by false pretences pearl necklace valued 75,000 rupees from Poohomull Brothers at Bombay February 2nd last representing himself Lieutenant Colonel attached for duty to How Battalion Royal Marines on furlough. Left Bombay for Vancouver February 27th leaving draft dishonoured on presentation. About 6 feet holds himself upright athletic complexion florid hair scanty approximate weight about 13 or 14 stone recently at Quebec whence police state left October 1st for Ritz Carlton Hotel New York. Messrs. Pinkerton are understood to have been communicated with already. Person able to identify accused will be sent Ends.

Please take necessary action. Any further enquiry necessary should be addressed to Governor of Bombay direct. Secretary of State for India presumes application will be made to Emigration au-

thorities if action by them suitable also that if person to identify not needed, Governor of Bombay will be informed.

BALFOUR.

23 I hereby certify that the above is a true and exact translation of an original telegram in British Government Code from the British Secretary of State for Foreign Affairs to the British Consul General New York which is now in my possession.

[SEAL.] (Signed) T. F. CARLISLE,
H. B. M. Consul General.

New Orleans, December 17th, 1917.

24 *Certificate of James A. Smith, Consul-General for the United State at Calcutta, India.*

Filed — — —.

Certificate.

I, James A. Smith, Consul-General for the United States in Calcutta, hereby certify that the annexed papers being (1) a warrant of arrest, and (2) copies of *prima facie* proceedings in the Court of the Chief Presidency Magistrate, Bombay, proposed to be used upon an application for the extradition from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences alleged to have been committed in Bombay, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of British India, as required by the Act of Congress of August 3rd, 1882.

[SEAL.] (Signed) JAS. A. SMITH,
*Consul General of the United States
of America at Calcutta, India.*

Calcutta, April 8th, 1918.

25 *Certificate of A. H. Grant, Secretary to the Government of India in the Foreign and Political Department.*

Filed Oct. 30, 1918.

Certificate.

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Lieutenant Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences, committed in British India, I hereby certify that, to the best of my knowledge and belief, the signatures "Chunilal H. Setalvad" on the warrant of arrest, and on the information and depositions on which the warrant was granted, are the signatures of Chunilal Harilal Setalvad, a Magis-

trate in British India, having authority to issue and receive the same, and I further certify that such documents so signed by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Secretary to Government and sealed with his official seal, would be received in evidence for similar purposes in the Tribunals of British India.

[SEAL.] (Signed) A. H. GRANT,

*Secretary to the Government of India in
the Foreign and Political Department.*

Simla, the 2nd April, 1918.

26

Case No. 533/W. of 1917.

No. 5958 of 1917.

To Arthur Fuller, Inspector, Bombay City Police Force, Bombay:

Whereas one Lieutenant Colonel Charles G. Collins stands charged with the offence of cheating at Bombay under Section 420 Indian Penal Code in respect of a pearl necklace valued at Rs. 75,000 the property of the firm of Poohomull Brothers Jewellers of Bombay.

You are hereby directed to arrest the said Lieutenant Colonel Charles G. Collins and to produce him at the Chief Presidency Magistrate's Court at Bombay before such Presidency Magistrate as may then be present.

Herein fail not.

Dated this 11th day of October 1917.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

27 In the Court of the Chief Presidency Magistrate, Bombay.

In re UDHARAM PATARBAHAI, Manager of the Firm of Poohomull Brothers, Jewellers, of Bombay, Complainant,

vs.

Lt. Colonel CHARLES G. COLLINS, Accused.

Charge: Cheating, Section 420, I. P. Code.

I the undersigned being the Ag. Chief Presidency Magistrate of Bombay hereby certify that the typed matter contained in the foregoing pages of paper is a true copy of the information of Udharam Patarbhai Manager of the firm of Poohomull Brothers, Bombay, taken on solemn affirmation before me on the 22nd day of September, 1917, and of the depositions of the said Udharam Partabrai (or Patarbhai), Lokumull Sahijram, John Dunston Sherston Baker, in support thereof sworn and taken before me on the 11th day of October 1917 and of the further application made by Udharam Partabrai and of my order thereon and of the deposition of Arthur Fuller in support thereof sworn and taken before me on the 19th

day of October 1917 and of the Lists of Exhibits and of exhibits thereto marked A, B, C, D, E, F, G and H and of my certificate.

Given under my hand and the seal of the Court this 19th day of October, 1917.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

UDHARAM PATARBAGH, Complainant,

vs.

Lieutenant Colonel CHARLES G. COLLINS, Accused.

The information of Udharam Patarbagh of Bombay Hindoo Inhabitant the Manager of Pohoomull Brothers a firm carrying on business at Apollo Bunde Bombay and elsewhere solemnly affirm this — day of September 1917 before the Presidency Magistrate Bombay, Shew-th:

1. That your complainant is the manager in Bombay of Pohoomull Brothers a firm of jewellers, silk merchants and curio dealers who carry on business inter alia at Apollo Bunder Bombay.

2. The accused described himself as Lieut. Col. Charles G. Collins of the Howe Battalion, Royal Naval Division and it has been ascertained that he is now resident at Chateau Frontenac Quebec and it is believed he is attached to the Ottawa Militia.

3. On or about the 20th December 1916 the accused in company with one Mrs. Olsan, and a Mrs. Elsie Muntz believed to be a divorcee and the fiancee of the accused were staying at the Ta Mahal Hotel Bombay and they visited your complainant's shop and made some small purchases for which they paid cash.

4. On the 23rd December 1916 the accused purchased a silk rug from your complainant for Rs. 650 and paid for it by a cheque on Thomas Cook & Son, Bombay.

5. About this time the accused and Mrs. Olsan and Mrs. Muntz left the Taj Mahal Hotel and went to reside in a bungalow 29 in Harkness Road Malbar Hill.

6. A few days later the accused and Mrs. Muntz called at your complainant's shop and asked to see some pearl necklaces of the value of about Rs. 75,000. An appointment was made at the accused's residence to which your complainant was to take some necklaces and this was done and Mrs. Muntz selected a pearl necklace of the value of Rs. 72,250 but it was not then purchased.

7. On the 30th January 1917 the accused bought a pearl ring for Rs. 1000 for which he paid. On that day the accused and Mrs. Muntz said they wanted thirteen pearls in the necklace altered. It was not possible to alter the required number of pearls but seven were altered bringing up the value of the necklace to Rs. 75,250.

8. On the 2nd February 1917 the accused asked your complainant to call at his bungalow and Mr. Lokoomull Sahigram a member of

the firm of Pohoomull Brothers and Tojoomul Dingomull a manager of the firm attended at the bungalow.

9. The accused then purchased the necklace for Rs. 75,000 and promised to pay for the same. The accused gave your complainant's firm a draft for £5000 on Messrs. E. Curtice and Company 8 Clarges Street London in payment. Your complainant says that the accused well knew that the said draft would not be paid.

10. Your complainant's firm were not then satisfied with the said draft and did not give delivery of the necklace and on the 3rd February 1917 the accused in company with the said Tejoomull Dingomull had an interview with Mr. Brent the Manager of the International Bank, Bombay. Mr. Brent suggested that the accused should wire to Messrs. E. Curtice & Company to pay £5000 to the International Bank's office in London and Mr. Brent wired to that office to receive the money.

11. The accused subsequently informed your complainant's firm that he had cabled accordingly to Messrs. E. Curtice & Company and that the amount of the draft would be duly paid to the International Bank by Messrs. E. Curtice and Company on receipt of the said telegram.

12. On the 7th February 1917 the said Mrs. Muntz on behalf of the accused called at your complainant's shop and took delivery of the said necklace.

13. Your complainant's firm had certain urgent payments to make of a considerable amount and therefore on the 10th February 1917 they asked the accused whether he would pay them Rs. 15,000 on account of the said draft, of which the proceeds had not then been received by them. The accused gave them a cheque for Rs. 15,000 on Thomas Cook and Son and it was arranged that your complainant's firm should repay that amount to the accused when the proceeds of the draft had been received in Bombay. The said cheque for Rs. 15,000 was duly honoured.

14. On the 22nd February 1917 your complainant's firm received a letter from the International Bank stating that their London Office had received no moneys from Messrs. E. Curtice and Company.

15. On the 23rd February 1917 the accused was interviewed and stated that he had instructed his London Agents to sell some shares but that they had advised against his doing so and had suggested a loan instead.

16. On the 25th February 1917 the accused was again interviewed by Sahijram Khiamul Lokoomull Sahijram and Tejoomull Dingamull and he stated he could sell his shares but that it would take a month to do so and he proposed therefore to give them a draft for £4000 on the firm of William Collins Sons and Company of which he stated he was a partner. The accused represented that his brother was another partner and would not refuse a draft from him.

17. On this representation your complainant's firm returned to the accused the draft on Messrs. E. Curtice and Company and accepted a draft drawn by the accused on William Collins Sons and Company of London and Glasgow. Your complainant's firm agreed not to present the draft until the 15th April 1917.

18. On the 27th February 1917 the accused with Mrs. Olsan and Mrs. Muntz left India for Colombo and thence travelled Eastward to America.

31 19. On the 21st April 1917 your complainant was advised that the draft for £4000 had been refused with the answer "No authority to draw." The said draft has been presented twice but has not been paid. Your complainant says that the accused well knew that it would not be paid.

20. Your complainant submits that the accused deceived your complainant and thereby dishonestly induced your complainant's firm to deliver the said necklace to Mrs. Muntz on his behalf upon a promise to pay for the same, which promise the accused had no intention of performing, that the accused gave your complainant a worthless draft for £5000 on Messrs. E. Curtice and Company well knowing the same to be worthless and that the accused gave the draft for £4000 on William Collins Sons and Company well knowing that the same was worthless.

Your Complainant therefore submits that the accused has committed the offence of cheating under S. 420 of the Indian Penal Code and prays that he may be charged and dealt with according to law.

(Sd.)

UDHARAM PARTABRAI.

Mr. BAKER,
For Complainant.

Taken on solemn affirmation before me—

(Sd.)

CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

22-9-17.

32 In order that complainant may produce witnesses to enable me to act under the Fugitive Offenders' Act adjourned to 25-9-17.

(Sd.)

CHUNILAL H. SETALVED,

Ag. Chief Presidency Magistrate.

Further adjourned for orders to 11-10-17.

(Initialled)

C. H. S.

25-9-17.

True copy.

[SEAL.]

(Signed) CHUNILAL H. SETALVED,
Ag. Chief Presidency Magistrate, Bombay.

33 547-2,000,000-6-14—(12)—st. Civ. A. 27 e.

EXHIBIT No. —.

Deposition of Witness No. I for the Prosecution.

I do hereby on solemn affirmation state that—

My name is Udharam	Father's name Partabrai
Religion Hindoo	Caste Katri
Age about 21	Occupation Manager of Pohoomull
Residence Carnac Bridge	Brothers
	District—

Examination-in-chief:

The accused Lieutenant Colonel Collins has absconded out of British India and according to my information he is at present in Quebec Canada. I am Manager of Pohoomull Brothers doing business in Bombay and other places as jewellers and in silk and curios. I am the Manager of the Apollo Bunder shop. I know the accused Lieutenant Colonel Charles G. Collins. I first saw him on or about 20th December 1916 when he visited our shop at Apollo Bunder. The accused talked a good deal about himself. He said that he was attached to the Howe Battalion and that he was a Royal Naval Officer. He said he was on six months' leave. There was one Mrs. Olsen with him and Mrs. L. C. Muntz. The accused told me that Mrs. Muntz was his fiancee. The accused told me that they were all staying at the Taj Mahal Hotel which is a first class Hotel in Bombay. Accused made some purchases worth about 200 or 300 Rs. and paid for them. On or about 23rd December 1916 the accused accompanied by Mrs. Muntz came to me at our Apollo

34 Bunder shop and bought one silk rug for Rs. 650 and the *and the accused* gave a cheque on Messrs. Thomas Cook and Sons and the cheque was cashed. About this time the accused and the two ladies changed their residence from Taj Mahal Hotel to Harkness Road, Malabar Hill a locality where rich persons reside. A few days afterwards the accused and Mrs. Muntz called at our Apollo Bunder shop and they said that they wanted to see some pearl necklaces of the value of about Rs. 75000 each. I did not show any necklace that day but I made an appointment to take the necklaces to their residence. A few days afterward Mr. Tajamull our general Manager and Mr. Lokhumull one of the proprietors went to the accused's bungalow with two or three necklaces. Then they returned and gave me back the necklaces. On 30th January last the accused Colonel Collins and Mr. Muntz came in our shop and bought a pearl ring for 1000 Rs. and the accused gave a cheque which was cashed. On this occasion Mrs. Muntz said in the presence of the accused that the particular necklace which they saw at their residence may be shown to them again and I showed it. The value of that necklace was 72250 Rs. Mrs. Muntz said that she wanted

13 pearls to be altered from that necklace and that she would not mind if it cost a few hundred pounds more. We got 6 or 7 pearls altered and the value of the necklace became 75000 Rs. The necklace was ready on 2nd February 1917. I or Mr. Tejumull telephoned to the accused saying that the pearl necklace was ready and he replied saying that he would call at the shop at 1 P. M. Subsequently that day I got a message from him that the pearl necklace should be taken over to his place at Malabar Hill. Mr. Lokomull Lokhumull and Mr. Tejoomull took the necklace to the residence of the accused. I did not go. Lokhumull and Tejumull returned with the necklace and they brought a draft for 5000£ drawn by the accused on Messrs. E. Curtice of 8 Clarges Street, London W. I produce the draft original as well as duplicate put in and marked Ex. A. One of the senior partner- Mr. Sahijraim one of the proprietors of our firm was not satisfied with the draft so he went to the manager of the International Banking Co. with the draft. On his

35 return and under his advice I telephoned to the accused asking him to see us the next day. The following day the accused

came to our shop and he went with Tejumull to see the Manager of the International Bank. From that Bank Tejumull telephoned to me to take the draft Ex. A to that Bank and I did so. I went inside to the Manager of the Bank where Tejumull and the accused were also seated. The Manager Mr. Bent suggested that the accused should wire to his agents E. Curtice & Co. to pay 5000£ to the Manager of the International Bank in London. The accused said that that course would be very satisfactory to him and that he was going to wire to his agent to that effect. The accused also assured us that the amount will be paid immediately by E. Curtice & Co. to the Manager International Bank London on the receipt of his telegram. Sometime afterwards accused said he had sent the telegram. After two or three days the accused accompanied by Mrs. Olsan and Mrs. Muntz came to our shop in the evening. Mrs. Olsan said that she also wanted to buy a pearl necklace worth about Rs. 75000 and we showed them one necklace worth about 6000 Rs. They did not buy it. On or about 7th February 1917 the accused came to our shop with Mrs. Muntz and asked for the delivery of the first necklace. Lokumull, Trjumull and myself consulted whether the necklace should be given as no money was paid. Accused assured us that he had sent a telegram as arranged and that the amount will be paid by E. Curtice & Co. to the Manager International Bank, London. Trusting to these assurances we gave the accused the necklace. Then on or about 10th February we had some drafts to meet. Lokumull and Tejumull went to the accused's house and Lokumull gave me a cheque for 15000 Rs. drawn by the accused on Messrs. Thomas Cook & Sons. Lokumull told me that we would have to return 15000 Rs. to accused on the Manager of the International Bank receiving 5000£ on our behalf. That cheque for Rs. 15000 was cashed some days late. On 22nd February we got a letter from the International Banking Corporation saying that nothing was received from E. Curtice & Co. I produce that letter put in and marked Ex. B. Upon that Lokumull and Tejumull went to the

accused's bungalow and they saw and gave me certain information. On 23th February last they gave me a draft for 4000£. drawn by the accused on Messrs. William Collin and Sons Glasgow. On 27th February the accused and the two ladies left Bombay by P. & O. Co.'s steamer for Columbo. Accused told me that they would go from here to Colombo then to Shanghai and then to London. The accused told me that the draft for 4000£. should be presented on 15th April and we sent the draft for collection to the International Bank Bombay. On 20th April we received a letter from the International Banking Corporation stating that the draft in question was refused payment with the answer "no authority to draw." I produce that letter put in and marked Ex. C. We then telegraphed to our agent at Yokohoma for arranging with the accused for payment. We received this telegram dated 21st April from the accused from Yokohoma saying to represent the draft 60 days' sight delay unavoidable. The telegram put in and marked Ex. D. Then we caused inquiries to be made and found that the accused was touching Vancouver so we sent a telegram to him there but no reply was received. The International Banking Corporation thrice presented the draft for payment but it was not honoured. On 27th. June we received this letter from the Bank put in and marked Ex. E saying that "Collins noted nonpayment." Then we instructed our Solicitors Messrs. Little & Co. to communicate with their London correspondents and I produce the reply which my Solicitors got from Rawle Johnstone & Co. Solicitors put in and marked Ex. F. We have also received information from reliable sources to the effect that Messrs. E. Curtice & Co. are not Bankers but only boarding house keepers and the accused is an undischarged bankrupt.

I have no reason to disbelieve this information. The draft of 4000£. in question is in London with the International Banking Corporation at present. I say the accused has cheated us.

37 If he had not given us the assurances I have spoken of we would not have given the necklace to him. The accused is tall, clean shaven about 40 years of age. He is fair. I will be able to identify him and will be able to identify the necklace in question. I will also be able to identify most of the pearls even if the necklace is broken up. It was a single row necklace. The transaction is put down in our book.

(Sd.)

UDHARAM PARTABRAL.

Taken on solemn affirmation this 11th day of October 1917,
Before me—

(Sd.)

CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

True Copy.

[SEAL.]

(Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

EXHIBIT NO. —.

Deposition of Witness No. II for the Prosecution.

I do hereby on solemn affirmation state that—

My name is Lokumull.

Father's name Sahijram.

Religion Hindoo.

Caste Khatri.

Age about 27.

Occupation Merchant.

Residence Carnac Bunder.

District —.

Examination-in-chief:

I am one of the partners of Messrs. Pohoomull Brothers doing business in jewellery, silk and curios at Bombay and various other places. One of our shops is at Apollo Bunder Fort in Bombay. The accused Lieutenant Colonel Collins absconded from British India. According to our information he is at Quebec Canada. I first met him about the middle of January last. I accompanied by Tejumull our general Manager and my father Sehejram went to the accused at his bungalow at Malabar Hill with some pearl necklaces. There the accused and one Mrs. Muntz examined the necklaces and selected one necklace worth about 72258 Rs. But they did not buy it at the time though they said that they liked it the best. On 30th January last Mrs. Muntz and the accused came to our Apollo Bunder shop and they purchased one pearl ring worth 1000 Rs. and paid for it by a cheque which was cashed. They looked at the same necklace. Mrs. Muntz said that she wanted to have 13 pearls changed from that necklace. Accused told me that Mrs. Muntz was his fiancee. We altered 7 pearls and it was not possible to alter the 13

pearls and the price increased by 3000 Rs. The necklace 39 was ready on 2nd February. I and Tejumull took that

necklace and went to the accused's bungalow at Malabar Hill and there we saw the accused and Mrs. Muntz. Mrs. Muntz said in the presence of the accused that she was going to marry him (the accused) and the necklace was going to be a Wedding Present to her from him. The accused examined the necklace and said he purchased it. The accused drew the original and duplicate drafts Ex. A on E. Curtice & Co. but we were not satisfied with the draft and we wanted to consult with my father so we brought back the drafts and the necklace. The last witness Udharam knew all this. My father was not satisfied with the drafts so we went and consulted our Bank i. e. the Manager of the International Banking Co. Ltd., and he advised use to get the money by telegram and we agreed. The next day Tejumull telephoned to the accused to come and see our Bank Manager. That day the accused showed me a telegram which he was sending to St. Lewis saying cable 2500 dollars more available if needed. Accused told Tejumull in my presence to send telegram to the telegraph office and it was done. Reading that telegram accused impressed us with the fact that accused was a rich

man and we can safely trust him. I was not present at the interview with the Manager of the International Banking Corporation. On 5th February last accused came to our shop with Mrs. Muntz and Mrs. Olsan and Mrs. Olsan said she wanted to purchase a necklace worth about 5000£ and we showed her necklace worth about 60000 Rs. but she did not purchase it. On 7th February accused accompanied by Mrs. Muntz came to our shop and they wanted that necklace worth 75000 Rs. which they had selected. Accused assured us that 5000£ will be paid by Messrs. E. Curtice & Co. on his telegram to our Bankers viz. the International Banking Co. in London so we consulted among us and believed the accused and we gave the accused the necklace worth 75000 Rs. On 22nd February

40 we received information from our Banker that the money was not paid by E. Curtice & Co. Ex. B is the letter we received from our Bankers. On 23rd February last I and Tejumull went to the accused at his bungalow and we told him what our Banker had written. Then the accused told us that he had wired his agents E. Curtice & Co. to sell some of his shares and that he had received a reply saying that the shares do not fetch the proper value and so it was advisable to get a loan. Accused also said that he had wired to his agents to give the terms on which he can get a loan but that no reply had been received. On 25th February last myself and Tejumull went to the accused's bungalow and he said he was one of the partners in William Collins Sons & Co. Glasgow London and that he owns oil fields in Mexico. Accused said that Mrs. Muntz was a lady of means. Accused also said that he had some shares in Mexico mines and he said it would be a heavy loss to him if he sold his shares. Accused said that if he gave a cheque for 4000£ on the firm of William Collins Sons & Co. at Glasgow on which he was a partner the firm will not refuse it. Accused said that he was going to get 90000£ as profit on the sale of his mines but he wanted a 120000£ as profit. On 26th February accused gave me a draft for 4000£ on William Collins Sons & Co. It was a sight draft but he told us not to present the draft till 15th April and we agreed. We gave the drafts for collection to the International Banking Corporation and it has been dishonoured. Ex. C is the letter from our Bankers. The accused is rather tall, thin in face, clean shaven, about 40 years of age. Our Solicitor i. e. Mr. Baker of

41 Messrs. Little & Co. held a consultation with Mr. Strangman the Advocate General and I produce the certificate that he has given. This certificate put in and marked Ex. G.

Taken on solemn affirmation this 11th day of October 1917.

(Sd.) CHUNILAL H. SETALVAD,

Before me—

(Sd.)

CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

True copy.

[SEAL.]

(Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

EXHIBIT No. —.

Deposition of Witness No. III for the Prosecution.

I do hereby on solemn affirmation state that—

My name is John Dunstan	Sherstan Baker
Religion Christian	Caste
Age about 35	Occupation Solicitor
Residence Wallace Street	District Bombay.

Examination-in-chief:

I am a partner of Messrs. Little and Company Solicitors. We are acting for the complainant. I have gone into the case. I have also caused inquiries to be made about the accused. We received this reply from our correspondent Rawle Johnson and Co. It is Ex. F. I am of opinion that on the depositions and the materials there is a *prima facie* case of cheating punishable with more than one year rigorous imprisonment, it is punishable with seven years' rigorous imprisonment under section 420 of the Indian Penal Code which is in force in British India. I have got the certificate Ex. G from the Advocate General who has advised this prosecution.

(Sd.)

J. D. SHERSTON BAKER.

Taken on oath this 11th day of October, 1917, before me

(Sd.)

CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

True copy.

[SEAL.]

(Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

Before the Chief Presidency Magistrate.

Case No. 533/W. of 1917.

UDHARAM PATARBAUGH, Complainant,

vs.

Lieutenant Colonel CHARLES G. COLLINS, Accused.

The application of Udharam Patabargh the above-named complainant, sheweth,

1. That on the 22nd day of September 1917 your complainant filed an information against the above-named accused in this

Honorable Court charging the accused with cheating in respect of a sum of Rs. 60000 part of the purchase price of a pearl necklace.

2. That at the date of the filing of the information the accused was believed to be at Quebec in Canada.

3. That the learned Magistrate accordingly directed that the procedure laid down by the Fugitive Offenders Act should be complied with and after the same had been complied with the learned Magistrate on the 11th day of October 1917 directed the issue of a warrant of arrest against the accused.

4. That your complainant has, since the issue of the said warrant, been informed by the Under Secretary to Government Political Department that the accused on or about the 1st October 1917 left the said City of Quebec and proceeded to New York in the United States of America and that he is now resident at the Ritz Carlton Hotel in that City.

Your complainant therefore prays that further evidence necessary to be recorded where an accused is not within His Majesty the King Emperor's dominions may be recorded and that a fresh warrant may be issued and that such fresh warrant should comply with the provisions of the Extradition Acts and the Extradition treaty with the United States of America.

Dated this 19th day of October 1917.

(Sd.)

UDHARAM PARTABRAI.

Application drawn by

LITTLE & CO.

Complainant's Attorneys.

In pursuance of this application Inspector Fuller is examined today. A warrant for the arrest of the accused on the materials already before me is issued as prayed for.

(Sd.)

CHUNILAL H. SATALVAD.

19-10-17.

True copy.

[SEAL.]

(Signed) CHUNILAL H. SETALVAD,

Ag. Chief Presidency Magistrate, Bombay.

45 547-2,00-000-6-14-(12)—st. Civ. A. 27e.

EXHIBIT No. —.

Deposition of Witness No. IV for the Prosecution.

I do hereby on solemn affirmation state that—

My name is Arthur	Father's name Fuller
Religion Christian	Caste
Age about 41	Occupation Inspector of Police,
Residence Phalton Road	Bombay.
	District —

Examination-in-chief:

I am an Inspector in the Bombay Police. I am deputed by the Government of Bombay through the Commissioner of Police to act as an escort of the accused Collins if surrendered. I was handed a warrant by this Court under the Fugitive Offenders Act. Telegrams were sent by His Excellency the Governor of Bombay for the arrest of the accused Collins to the authorities at Quebec where he was said to have absconded but subsequently information has been received that the accused Collins has gone to New York in the United States. I produce the letter from the Under Secretary to Government Political Department addressed to the Commissioner of Police mentioning these facts. This letter put in and marked Ex. H. I have also gathered information about the appearance and marks for the identification of the accused Collins. He is tall, *well* built about 6 feet high athletic florid complexion, walks with Military 46 gait squaring shoulders. He was clean shaven when in Bombay. Hair scanty dresses well but flash, weighs between 13 and 14 stones.

(Sd.)

A. FULLER,
Inspector.

Taken on oath this 19th day of October, 1917, before me

(Sd.) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

True copy.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

47 *List of Exhibits in Case No. 533/W. of 1917.*

Exhibit A. Original and Duplicate drafts for £5000 dated 2nd February 1917 from Lt. Col. Charles G. Collins to Messrs. E. Curtice & Co., 8 Clarges Street, London, W. England.

Exhibit B. Letter from the International Banking Corporation Bombay dated 22nd February 1917 to Messrs. Pohoomall Brothers, Bombay.

Exhibit C. Letter from the International Banking Corporation dated 20th April 1917 to Messrs. Pohoomall Brothers, Bombay.

Exhibit D. Telegram from accused Colonel Collin to Pohoomall, Bombay.

Exhibit E. Letter from the International Banking Corporation dated 27th June 1917 to Messrs. Pohoomall Brothers, Bombay.

Exhibit F. Letter from Rawle Johnstone & Co. dated 14th August 1917 to Messrs. Little & Co.

Exhibit G. Certificate from Advocate General.

Exhibit H. Letter No. 8012 dated 17th October 1917 from the Under Secretary to Government, Political Department, Bombay, to the Commissioner of Police, Bombay.

(Sd.)

BALARAM GAJANAN,

*Judicial Clerk,**Chief Presidency Magistrate's Court, Bombay.*

True copy.

[SEAL.]

(Signed) CHUNILAL H. SETALVAD,

Ag. Chief Presidency Magistrate, Bombay.

48

Ex. A.

No. B. 42876.

Duplicate.

£5000-0-0.

Bombay, February 2nd, 1917.

Sixty days after date (original unpaid) pay to Pohoomall Bros. or Order the sum of five thousand pounds sterling and charge the same to my account.

(Sd.)

CHARLES G. COLLINS,

Lieut. Colonel.

To Messrs. E. Curtice & Co., 8 Clarges Street, London, W., England.

Ex. A.

No. B. 42876.

Original.

£5000-0-0.

Bombay, February 2nd, 1917.

Sixty days after date pay to Pohomull Brothers or Order the sum of five thousand pounds sterling and charge the same to my account.

(Sd.)

CHARLES G. COLLINS,
Lieut. Colonel.

To Messrs. E. Curtice & Co., 8 Clarges Street, London, W., England.

True copy.

[SEAL.]

(Signed) CHUNILAL H. SETALVAD,

Ag. Chief Presidency Magistrate, Bombay.

49

Ex. B.

International Banking Corporation.

Bombay, 22nd February, 1917.

Messrs. Pohoomull Brothers, Bombay.

DEAR SIRS: In response to our telegram of the 19th Instant to our London office enquiring if they had received any sum from Messrs. E. Curtice & Co. we have today received a telegram stating that nothing has been received.

Please note that we have debited your account with Rs. 20 cost of telegram. Kindly confirm our entry.

Yours faithfully,
(Sd.)

_____, Manager.

True copy.

[SEAL.]

(Signed) CHUNILAL H. SETALVAD,

Ag. Chief Presidency Magistrate, Bombay.

50

Ex. C.

International Banking Corporation.

Bombay, 20th April, 1918.

Messrs. Pohoomull Bros., Bombay:

Yours. C. on Wm. Collins Sons & Co. Ltd. Glasgow p. £4000/—
Our No. 17/215.

We have received telegraphic advice from our London Office that the above bill is refused payment with the answer "no authority to draw."

Kindly give us your further instructions and hand us Rs. 161-4-
being our $\frac{1}{4}\%$ commission and cost of telegram as under:

$\frac{1}{4}\%$ commission on £4000/- = £10/- @ $\frac{1}{4}$	Rs. 150-0-0
C/o telegram from London re: do	" 11-4-0
<hr/>	
	Rs. 161-4-0

Any further charges yet to be paid will be advised to you on receipt of advice from London.

Yours faithfully,

[SEAL.] (Sd.) — — —, Manager.

True copy.

(Signed)

CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

51

Ex. D.

C3

Posts Telegraphs.

Bombay 2nd April 1917.

G. T. O.

= DF LF 278 Yokohama 24 MS PHK 11.

L C D Pohoomull Bombay.

Represent draft sixty days delay unavoidable.

COLONEL COLLIN.

True Copy.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

52

Ex. E.

International Banking Corporation.

Bombay, 27th June, 1917.

Messrs. Pohoomull Bros., Bombay.

DEAR SIRS: We have received the following telegram from our London Office today:

"Referring to your telegram of 21st collection No. 215 Collins noted non-payment."

For cost of this message your account is debited Rs. 7/8/—(Rupees seven and annas eight only) which please note and confirm.

Yours faithfully,

(Sd.) — — —, Manager.

True copy.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

53

Ex. F.

1 Bedford Row, London, W. C. 1,

August 14th, 1917.

Re Collins.

DEAR SIRS: With reference to your letter of the 12th July we have communicated with our Glasgow correspondents who are important people and who will be able to give us more information about the subject of your enquiry than anyone else.

The following is an extract from a letter we have received from our Glasgow correspondents, whom we asked to make enquiries.

"We are in receipt of your letter of the 10th Curt.

"We happen to know a good deal about Charles G. Collins. We are the Solicitors of his elder brother, Mr. W. A. Collins, and are on intimate terms with another brother, Mr. Godfrey P. Collins "M. P. for Greenock.

"About Charles we have only the worst report to give. As a young man he had to resign his Commission in the Army. He was for many years in America and was a few years ago involved there in a criminal prosecution in regard to money matters.

"He got a chance in the present war and did well, we might say "brilliantly to begin with, but had to leave the Army (we do not "know the particulars), when holding the rank of Lieutenant "Colonel.

54 "He married an American, who had means of her own in strong "opposition to her father but they separated some time ago.

"We have heard that he was associated with a married "woman presumably Mrs. Montz, but as his wife is not, we "understand, to proceed with a divorcee, Mrs. Montz's relation with "him must be somewhat unusual.

"We know nothing as to any interest he may have in oil fields in "Mexico, but we do not believe his statement as to this to be true.

"We do know, however, that he has no interest in Messrs. William "Collins & Sons & Co. Ltd., and that neither of his brothers will do "anything for him.

"We are sorry that our report should be so unsatisfactory, but leave "it to you to decide as to how much of it you should communicate "with your Bombay correspondents."

We are communicating with the War office as to the present whereabouts of Colonel Collins but we are afraid that we shall get nothing but the usual answer in these cases, which almost invariably that the address will not be given, but that any letter we like to send to Colonel Collins C/o the War Office, will be forwarded.

Yours truly,
(Sd.)

RAWLE JOHNSTONE & CO.

Messrs. Little & Co.

True copy.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,

Ag. Chief Presidency Magistrate, Bombay.

55

Ex. G.

In the Esplanade Police Court of Bombay.

UDHARAM PATARBAGH, Complainant,

vs.

Lt. Col. C. G. COLLINS, Accused.

I, Thomas Joseph Strangman Advocate General of Bombay India do hereby certify:

1. That the offence with which the accused is charged is that of cheating and dishonestly inducing delivery of property.
2. That the offence of cheating and dishonestly inducing delivery of property is punishable under Section 420 of the Indian Penal Code with either simple or rigorous imprisonment (the latter being imprisonment with hard labour) which may extend to seven years.

Dated this 25th day of September 1917.

(Sd.)

T. J. STRANGMAN,
Advocate General of Bombay.

True copy.

[SEAL.]

(Signed)

CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

56

Ex. H.

No. 8012.

Political Department,

Bombay Castle, 17th October, 1917.

From A. F. Kindersley, Esquire, Under Secretary to Government, Bombay.

To the Commissioner of Police, Bombay.

SIR: I am directed, with reference to the correspondence ending with your letter No. 10231/31, dated the 8th October 1917, to state that a reply has been received by His Excellency the Governor from the Lieutenant Governor of Quebec, dated the 13th October, as follows:

"Your telegrams of 6th and 11th August (sic). Reply that same person left with New York October 1st stay at Hotel Ritz Carlton, and is not in jurisdiction of Province of Quebec."

2. I am accordingly to say that, unless you see any reason to the contrary, you should apply to the Chief Presidency Magistrate for a warrant of arrest against Collins, stating the offence in terms of the treaty between the United States and Great Britain that is, as an

offence of "obtaining property by false pretences." The necessity for this will be seen on a reference to pages 66 and 201 (3rd treaty with United States) of the Honourable Mr. Muddiman's "Law of Extradition from and to British India." I am also to invite attention to Article X on page- 198-9 of the same.

57 3. The warrant should be addressed to the officer who is to be sent to act as escort to Collins. It should be submitted to Government with record of the evidence, or copies thereof certified by the recording Magistrate. In the case of depositions or other documents extending to more than one sheet of paper, any suspicion of the possibility of the substitution of a sheet should be forestalled by appropriate arrangements.

4. I am also to request that the description of the offender already asked for may be submitted to Government with the papers.

I have the honour to be, Sir,

Your most obedient servant,
(Sd.) A. F. KINDERSLEY,
Under Secretary to Government.

True copy.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

I, Chunilal H. Setalvad, Ag. Chief Presidency Magistrate, Bombay, do hereby certify that a prima facie case of an offence at Bombay of cheating under Section 420 of the Indian Penal Code in respect of or obtaining by false pretences a pearl necklace valued at Rs. 75000 has been established against the accused Lt. Colonel Charles G. Collins and that the alleged act constitutes under the law in force in the Bombay Presidency an offence punishable under the Indian Penal Code with imprisonment of either description (rigorous or simple) for seven years and a fine.

Given under my hand and the seal of the Court this 19th day of October 1917.

[SEAL.] (Signed) CHUNILAL H. SETALVAD,
Ag. Chief Presidency Magistrate, Bombay.

Filed Oct. 26, 1918.

No. 15927.

U. S. District Court, Eastern District of Louisiana, New Orleans.

In re Extradition Proceedings of CHARLES GLEN COLLINS.

Now comes Charles G. Collins whose extradition is sought in these proceedings and moves the Court to dismiss the affidavit herein and

to discharge him from custody without day because this Court is without jurisdiction to try appearer or to hear and pass upon the question raised by the affidavits or the rights of this appearer on the grounds and for the reasons following, to wit:

1st. Because that heretofore, to wit: on or about the 5th day of November 1917 affidavit was made by C. Clive Bayley His Britan-ic Majesty's Consul General at the Port of New York against appearer herein Charles G. Collins before Hon. Samuel M. Hitchcock, United States Commissioner for the Southern District of New York for the alleged offense, matters and things referred to and declared upon in the affidavit of Gerard M. Lolly, British Vice Consul at the City of New Orleans which is basis of these proceedings which said affidavit by the said C. Clive Bayley, His Britan-ic Majesty's Consul General was for the purpose of having this appearer extradited from this country where he then was and now is to British India which is the purpose of the affidavit in these proceedings by the said Gerard M. Lolly, British Vice Consul at the City of New Orleans; that upon the said affidavit of C. Clive Bayley, His Britan-ic Majesty's Consul General at New York, a warrant of arrest was issued by the said Samuel M. Hitchcock, United States Commissioner for the Southern District of New York and this appearer was thereupon arrested at the City of New Orleans by the United States Marshal for the Eastern

60 District of Louisiana acting under the authority of the said warrant issued by the said Samuel M. Hitchcock, United

States Commissioner for the Southern District of New York and this appearer was duly incarcerated in the Parish Prison located in the City of New Orleans and also in the House of Detention likewise in the City of New Orleans; that in due time the said affidavit by the said C. Clive Bayley, his Britan-ic Majesty's Consul General at the Port of New York hereinabove referred to was dismissed and appearer was discharged from custody thereunder and the said affidavit and the warrant issued upon the faith thereof were fully and duly satisfied and this appearer cannot now or again be held to answer the said charges nor for the offenses, matters or things alleged in said affidavits.

2nd. Because the affidavit of Gerard M. Lolly British Vice Consul is not such as is required by law does not comply with the law and did not justify the issuance of the warrant of arrest and does not justify the holding of this appearer thereunder for the reasons

(a) The said affidavit does not charge this appearer with having committed any crime and particularly does not charge him with having committed a crime for which, under the treaties between this Country and Great Britain, this appearer may be extradited.

(b) Because even if the said affidavit does charge such a crime herein immediately above referred to, the same is not made in the manner and form required by law and by the said treaties particularly because the said Loly, Affiant therein, does not state the source of his information upon which his alleged affidavit is made, nor does he annex thereto any paper, document, copy or evidence which justifies the affidavit, nor does he give the ground of his belief of the truth of the matters and things stated in the said affidavit.

61 Wherefore, this appearer objects to and protests against this Honorable Court hearing any evidence, either orally or documentary, upon the affidavit hereinabove referred to and prays the Court to dismiss the said affidavit and to discharge this appearer without day.

(Signed)

CHARLES GLEN COLLINS.

(Signed) J. ZACH SPEARING, *Atty.*

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me the undersigned authority personally came and appeared Mr. Charles G. Collins who being duly sworn deposes and says: That all of the allegations in the above and foregoing petition are true and correct.

(Signed)

CHARLES GLEN COLLINS.

Sworn to and subscribed before me this 22nd day of October 1918 at the City of New Orleans, State of Louisiana.

[SEAL.] (Signed) J. ZACH SPEARING,
Not. Pub.

62 *Affidavits of Complainant, Exhibits, Certificates, and Depositions of Witnesses.*

UNITED STATES OF AMERICA,
State of Louisiana,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared Gerard M. Loly, who being by me first duly sworn, deposed and said that he is British Vice Consul at the City of New Orleans; that Charles Glen Collins, having in British India committed the crime of obtaining goods by false pretenses, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 19th, 1917, fraudulently, falsely and feloniously pretended to the commercial firm of Ganeshi, Lall & Sons, carrying on business at Agra, Simla and Calcutta, India, that he, the said Collins, was a wealthy man, a partner in the firm of William Collins Sons & Company, of Glasgow and London; that he was a Colonel in the Howe Battalion of the Royal Naval Division; and was then on six months' leave; that he, the said Collins, then and there had the right to draw a draft for two thousand pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London; that the said E. Curtice & Company were bankers; that he, the said Collins, as a man of wealth, was amply entitled to an additional credit of two thousand pounds. Whereas, in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary was a bankrupt; that he was not and never had been a partner in

the firm of William Collins Sons & Company; that he was not a Colonel in the Howe Batallion of the Royal Naval Division, and was not then and there on six months' leave; that he, the said Collins, had no right to draw a draft for two thousand pounds, or for any amount, on said Messrs. E. Curtice & Company; that the said

63 E. Curtice & Company were not bankers; that the said Collins was not entitled to an additional credit of Two thousand pounds, or to any credit whatsoever; that by means of said false, fraudulent and felonious pretenses, said Collins then and there obtained from said commercial firm of Ganeshi, Lall & Sons, one emerald and diamond necklace; five emeralds; one star ruby and three sapphires, of the price and value of four thousand five hundred pounds, of the property and goods of said Ganeshi Lall & Sons; which said pretenses were to the knowledge of said Collins, at the time of making same, false and fraudulent; and affiant further says that said Collins is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further says that Thomas F. Carlisle, the British Consul General at this Port, is confined to his home by illness, and therefore cannot make this affidavit, and that affiant makes the same upon instructions received from the said Thomas F. Carlisle.

(Signed)

GERARD M. LOLY.

Sworn to and subscribed before me this 16 day of October, 1918.
(Signed) RUFUS E. FOSTER, *Judge.*

64 UNITED STATES OF AMERICA,

State of Louisiana,

Parish of Orleans,

City of New Orleans:

Before me, the undersigned authority, personally came and appeared Tom F. Carlisle, who being by me first duly sworn, deposed and said that he is British Consul General at the City of New Orleans; that he is informed and being so informed, verily believes that Charles Glen Collins having committed the crime of obtaining property by false pretences, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 19th, 1917, fraudulently, falsely and feloniously pretended to the commercial firm of Ganeshi, Lall & Sons, carrying on business at Agra, Simla and Calcutta, India, that he, the said Collins, was a wealthy man, a partner in the firm of William Collins Sons & Company, of Glasgow & London; that he was a Colonel in the Howe Batallion of the Royal Naval Division; and was then on six month's leave; that he, the said Collins, then and there had a right to draw a draft for two thousand pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London, and consequently that said draft would be paid; that the said E. Curtice & Company were bankers; that he, the said Collins, as a man of wealth, was amply entitled

to an additional credit of two thousand pounds; whereas in truth and in fact, the said Collins was not then and there a wealthy man, but on the contrary was a bankrupt; that he was not and never had been a partner in the firm of William Collins Sons & Company; that he was not a Colonel in the Howe Batallion of the Royal Naval Division and was not then and there on six months' leave; that he, the
65 said Collins, had no right to draw a draft for two thousand pounds or for any amount on said Messrs. E. Curtice & Company, and said Collins then and there well knew said draft would not be paid; that the said E. Curtice & Company were not bankers; that the said Collins was not entitled to an additional credit for Two thousand pounds, or to any credit whatsoever; that by means of said false, fraudulent and felonious pretences, said Collins then and there obtained from said commercial firm of Ganeshi, Lall & Sons one emerald and diamond necklace; five emeralds; one star ruby and three sapphires, of the price and value of four thousand five hundred pounds, of the property and goods of said Ganeshi Lall & Sons; which said pretences were to the knowledge of said Collins at the time of making same, false and fraudulent; and affiant further says that the said Collins, is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further states that the source of his information and belief, upon which information and belief this affidavit is based, is as follows:

The evidence taken on said charge in the Chief Presidency Magistrate's Court, at Bombay, India, duly certified according to the provisions of Section 5271 of the Revised Statutes of the United States; the evidence taken before Sir John Dickinson, Knight, Bow Street Police Court, London, and the evidence taken before Alexander Stuart Duff Thompson, at Glasgow, salaried Sheriff of the Sheriffdom of Lanarkshire, said pieces of evidence duly certified according to the provisions of Section 5271 of the Revised Statutes of the

66 United States are duly annexed to an affidavit filed this day in Cause No. — of the docket of the United States District Court for the Eastern District of Louisiana at New Orleans; and a telegram from the British Consul General at New York to the British Consul General at New Orleans, of date January 4th, 1918, a code translation whereof is hereto annexed as part hereof.

(Signed)

T. F. CARLISLE.

Sworn to and subscribed before me this 22 day of October, 1918.

(Signed)

RUFUS E. FOSTER, *Judge*.

67

British Consulate General, New Orleans.

Translation of Telegram in Code from the British Consul General at New York to the British Consul General at New Orleans, Received on January 4th, 1918.

Following from Secretary to the Government of Bombay, Political Department, Begins. Your telegram of December 21st. Two other charges against Collins; during February last obtained under false pretences jewellery valued £2000 from firm of Geneshild and Sons of Calcutta and a pearl button valued £1700 from Mahomed Alli Zaimal Ali Raza of Bombay. Ends. Suggest that further affidavits be made and provisional warrants applied for at New Orleans in respect of these further charges.

BAYLEY.

I hereby certify that the above is a true and exact translation of the telegram received by me from the British Consul General at New York which is hereto annexed.

(Signed)

T. F. CARLISLE,
H. B. M. Consul General.

New Orleans, January 7th, 1918.

68

Certificate.

I, James A. Smith, Consul-General for the United States in Calcutta, hereby certify that the annexed papers being (1) a warrant of arrest, and (2) copies of *prima facie* proceedings in the Court of the Chief Presidency Magistrate, Bombay, proposed to be used upon an application for the extradition from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences alleged to have been committed in Bombay, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of British India, as required by the Act of Congress of August 3rd, 1882.

[SEAL.]

(Signed)

JAS. A. SMITH,
*Consul-General of the United States
of America at Calcutta, India.*

Calcutta, April 8th, 1918.

69

Certificate.

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretences, committed in British India, I hereby certify that, to the best of my knowledge and belief, the signatures "A. H. S. Aston" on the warrant of arrest, and

on the information and depositions on which the warrant was granted, are the signatures of Arthur Henry Southcote Aston, a Magistrate in British India, having authority to issue and receive the same, and I further certify that such documents so signed by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Secretary to Government and sealed with his official seal, would be received in evidence for similar purposes in the Tribunals of British India.

[SEAL.] (Signed) A. H. GRANT,
*Secretary to the Government of India
 in the Foreign and Political Department.*

Simla, the 2nd April, 1918.

70

Case No. 662/W. of 1917.

No. 662/W. of 1917.

To Arthur Fuller, Inspector of the Bombay City Police Force, Bombay:

Whereas one Lt. Col. Charles Glen Collins stands charged with the offence of obtaining property by false pretences under section 420 of the Indian Penal Code within the jurisdiction of my Court in respect of jewellery valued at £2000 the property of the firm of Ganeshi Lall and Sons, jewellers of Calcutta.

You are hereby directed to arrest the said Lt. Col. Charles Glen Collins and to produce him at the Chief Presidency Magistrate's Court at Bombay or before such Presidency Magistrate as may then be present.

Herein fail not.

Dated this 1st day of December 1917.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

71 In the Court of the Chief Presidency Magistrate, Bombay.

In re BRIJMOHAN LALA RAMKISHANDAS, of the firm of Ganeshi Lall & Sons, Complainant,

vs.

Lt. Col. CHARLES GLEN COLLINS, Accused.

Charge: Cheating, See. 420, I. P. Code.

I the undersigned being the Chief Presidency Magistrate, of Bombay hereby certify that the typed matter contained in the foregoing 29 pages of paper is a true copy of the Information of Brijmohanlal Lala Ramkishandas of the firm of Ganeshilall and Son, Bombay taken on solemn affirmation before me on the 1st day of December

1917 and of the depositions of the said Brijmohanlal Lala Ramkishandas, Dattatria Ramchandra and Arthur Fuller in support thereof sworn and taken before me on the 1st day of December 1917 and of the list of Exhibits and of Exhibits thereto marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 and of my certificate.

Given under my hand and the Seal of the Court this First day of December 1917.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

72 In the Court of the Chief Presidency Magistrate, at Bombay.

The Information of Birjmohan Lala Ramkishandas of the firm of Ganeshi Lall & Sons Jewellers carrying on business at Agra, Simla and Calcutta against Lieut. Colonel Charles Glen Collins solemnly declared before A. H. S. Aston Chief Presidency Magistrate Bombay this — day of December 1917, sheweth:

1. Your complainant's firm carry on the business of the Jewellers and curio dealers at Agra Simla and Calcutta.

2. Lieutenant Colonel Charles Glen Collins (hereinafter called the accused) is, as your complainant is informed and verily believes, now under arrest in New York in the United States of America on an extradition warrant issued by this Hon-ble Court on a complaint of cheating and being No. 533W/— 1917 filed by Udharan Patarbugh of Pohoomull Brothers Jewellers of Apollo Bunder Bombay.

3. About the middle of February 1917 the accused with two ladies named Mrs. Olga Olsen and Mrs. Elsie Muntz were staying with Her Highness the Maharani Kapurthala and the accused purchased from your complainants firm the following jewells:

1 Fine square cut emerald weighing about 20 rutees.

1 Uneut emerald and diamond necklace.

1 Fine cabushon emerald weighing about 7 rutees.

1 Fine cut sap-hire about 16 rutees.

1 Cabushon emerald about 16 rutees.

1 Fine cut sapphire 11 rutees.

73 1 Fine cabushon emerald about 4 rutees.

1 Cabushon Sapphire about 31 Rutees.

1 Old engraved emerald about 80 rutees.

1 Fine cabushon star ruby about 20 rutees.

4. The price of the said jewells was £450/- equivalent to Rs. 67,500.

5. The purchase was completed on the 9th February 1917 when the accused gave your complainant a cheque for £500 on Messrs. Thomas Cook & Sons, Bombay and a promissory note for £2000 payable sixty days after date and expressed to be payable at Messrs. E. Curtice & Co., 8 Clarges Street London. The accused also promised to give to your complainants through their Agents Messrs. Thomas Cook & Son Bombay a sixty days' draft of his agents in London the said Messrs. E. Curtice & Co. for a further sum of £2000/-.

6. The accused represented that he was a wealthy man, a partner in the firm of William Collins Sons & Co. of Glasgow and London and

a Colonel in the Howe Battalion of the Royal Naval Division and then on six months' leave and he assured your complainant that the said cheque for £500, the said promissory note for £2000/— and the said draft for £2000/— would all be duly paid.

7. Your complainant's firm believed the assurance of the accused—and were induced thereby to deliver to him the above-mentioned jewels.

8. The said cheque for £500 was duly honored and the accused delivered to Messrs. Thomas Cook & Sons as your complainant's agents in Bombay the said draft for £2000.

9. Hereto annexed and marked "A" are copies of the said promissory note and draft and of a letter dated the 20th February 1917 written by the accused confirming the sale.

10. The accused left India on or about the 27th February 1917 and the said promissory note and draft were duly presented at maturity but were dishonored by non-payment. On being represented on several occasions they have been similarly dishonoured.

74 11. Your complainant has caused enquiries to be made in London and has been informed that the accused was adjudicated a bankrupt in England on the 19th August 1904 and that a second petition in bankruptcy was filed against him in 1916 and that he did not appear for his public examination.

12. Your complainant has also been informed that the accused has no interest at all in William Collins Sons & Co. Limited and that the same is not a firm but a limited Company.

13. Your complainant has been further informed that the accused was not on 6 months' leave from the Army as alleged by him but that since May 1916 he has not held a commission in the Army.

14. Your complainant has been further informed that Messrs. E. Curtice & Co. of 8 Clarges Street London are not Bankers and agents but merely boarding house keepers and were not aware that any draft had been drawn upon them by the accused nor had they any funds belonging to the accused wherewith to pay such drafts.

15. Your complainant submits that the accused deceived your Complainant and thereby dishonestly induced your complainant's firm to deliver the said jewels to him upon a promise to pay for the same which promise the accused had no intention of performing, that the accused gave a worthless promise note for £2000/— to your complainant well knowing the same to be worthless and that the accused gave a worthless draft for £2000/— to your complainant well knowing the same to be worthless.

75 Your complainant therefore submits that the accused has committed the offence of cheating under Section 420 of the Indian Penal Code and prays that he may be charged and dealt with according to law.

(Sd.)

BIRJMOHAN.

Solemnly declared before me.

(Sd.)

A. H. S. ASTON,
Chief Presidency Magistrate.

Brijmohan Lal:—One of the drafts was given in Bombay. The sale took place at Delhi. The draft for £2000 sterling dated 22nd February was given in Bombay. Accused owed us £2000 and it was in fulfillment of the promise that he gave us the £2000. Accused told us that he had money at Messrs. Clarges and Company and that the money would be paid at once. He had all the goods at this time.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

76

"A."

Copy of Promissory Note Made at Delhi.

£2,000.

Delhi, February 19th, 1917.

Sixty days after date I promise to pay to Messrs. Ganeshi Lall & Son or order the sum of Two Thousand Pounds sterling for value received.

(Sd.)

CHARLES G. COLLINS,
Lt. Col.

Payable at Messrs. E. Curtice & Co., 8 Clarges Street, London, W.

Copy of Draft Drawn at Bombay.

No. B. 695,928.

£2,000.

Bombay, 22nd February, 1917.

Sixty days after date pay Ganeshi Lall & Son or order the sum of Two thousand pounds sterling and charge my account.

(Sd.)

CHARLES G. COLLINS.

To Messrs. E. Curtice & Co., 8 Clarges Street, London, W.

Copy of Letter Given by Coll. Collins at Delhi.

The 20th February, 1917.

To Messrs. Ganeshi Lall & Son, Jewellers, of Agra, Delhi.

DEAR SIRS: I have taken delivery of all the stones and Necklace which I have bought yesterday morning to the value of £2500/—and paid a cheque for £500/—and given you a sixty days' draft on my Agents in London for £2000/—

77 I have also received from you the large emerald I bought of you yesterday evening, weighing 19 Rutees about to the value of £2000/—for which I am going to give you a sixty days' draft on

my Agents in London, through your Agents Messrs. Thomas Cook & Son, Bombay, on Thursday the 22nd of this month.

Yours faithfully,
(Sd.)

CHARLES G. COLLINS,
Lt. Col.

A true copy.

[SEAL.]

(Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

78 547-2,00,000-6-14—(12)—st. Civ. A. 27 e.

No. 662/W. of 1917.

EXHIBIT NO. —.

Deposition of Witness No. — for the—.

I do hereby on solemn affirmation state that—

My name is Brijmohanlal	Farther's name Lalla Ramkisondas
Religion Hindoo	Caste Khatri
Age about 25	Occupation Jeweller
Residence Calcutta	District —

Examination-in-chief:

I know the accused. I first met him in Agra in January 1917. With him was one Sir Edwin John of the John Mills of Agra and Commander Holmes, one Mrs. Trapman, one Mrs. Olsan who was represented as the Colonel's sister, one Mrs. Muntz who was represented as his wife. They came to my place. They first made a small purchase. They ultimately returned to Bombay. Accused gave me this card put in as Ex. No. 1. Accused asked me to come and see him at 8 Harkness Road. We showed him some things but we did not agree as to the price. Accused told me he was going to Baroda and Kapurthala and would come back to Delhi about 16th or 17th February 1917. On the 15th February I wrote a letter to accused. This is a copy Ex. No. 2. I received this reply Ex. No. 3. I went to the Cecil Hotel on Monday. My father was with me. I had a box of jewels with me. We saw accused on the 19th February in the Cecil Hotel Delhi. My father was there also accused. Mrs. Olsan, Mrs. Muntz and I. Accused selected some jewellery. This is a list of the ornaments he selected. It is correct Ex. 4. The price was agreed on as £2500. Accused gave me a cheque on Messrs. Thos. Cook and Sons, Bombay for Rs. 7500 leaving a balance of £2000 to be paid by promissory note in the afternoon for we had no hundi papers then. Before I gave him credit accused told me he had some interest in the Canadian Railway and was a partner of Collins Sons and Company and had some shares in London too. Accused said he would wire to his Bankers from Bombay to pay the drafts on the due date. In the afternoon we went to ac-

eused's room with the stamped Hundis. Accused wrote them in duplicate. This is a copy of the Promissory Note Ex. 5. After he had finished he looked at the jewels again and decided to buy one large emerald of 19 ratti for £2000. He did not pay at the time because we had no Hundis. Accused said he would give a draft to our Agents Messrs. Thos. Cook and Sons in Bombay. He gave us this draft letter to be written to Thos. Cook and Sons Ex. 6. Before leaving Delhi on the morning of the 20th he gave us this letter Ex. 7. He also gave us this card Ex. 8. He subsequently gave Messrs. Thos. Cook and Sons draft of which this is a copy Ex. 9. The original is in London. We received this advice by letter it is the original letter Ex. 10. Accused sent us this telegram Ex. 11. We received this advice from Thos. Cook and Sons Ex. 12. We caused enquiries to be made in London. I produce a letter received from Harry Morser with a report enclosed Ex. 13. No money has been received by me either in respect of the draft or Promissory note. Accused is a tall gentleman not very fat nor thin clean shaven, dark grey hair. He has a peculiar way of laughing. He has a very uncommon way of laughing. He does not walk like a soldier but like a millionaire. He looks like a very good man and a very rich man. He has left India.

80 If I had known that accused was an undischarged bankrupt and that Curtice and Company are boarding House keepers I would not have given accused the jewellery. I would not have accepted the draft in Bombay. Either I would have asked for cash or strong security and failing that I would have reported him to the Police. We know William Collins Sons and Company to be a good firm. I believed accused was a partner that is what he assured. I believed all his representations. I have lost £4000/-.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

81 547-2,00-000-6-14-(12)—st. Civ. A. 27 e.

EXHIBIT No. —.

Deposition of Witness No. — for the—.

I do hereby on solemn affirmation state that—

My name is Dattatraya Father's name Ramehndra
Religion Hindoo Caste Brahmin
Age about 31 Occupation Clerk in Thos. Cook and Sons
Residence Grant Road District Bombay.

Examination-in-chief:

On the 23rd February 1917 we had draft from Col. Collins. It was dated the 22nd February 1917. This is a copy of the draft viz. Ex. 9. It was given to me on account of Ganeshi Lall. The draft

was dishonoured. It has not yet been paid. It is with our London Office.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

82

547-2,00-000-6-14-(12)—st. Civ. A. 27 e.

EXHIBIT No. —.

Deposition of Witness No. — for the—.

I do hereby on solemn affirmation state that—

My name is Arthur

Father's name Fuller

Religion Christian

Caste European

Age about 41

Occupation Inspector of Police

Residence Phalton Road

District Bombay

Examination-in-chief:

I have ascertained the description of Col. Collins. He is about 6 feet high, has broad shoulders, florid complexion, walks with a Military gait, is cleanshaved, dresses in a flashy manner.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

83

List of Exhibits in Case No. 662/W. of 1917.

- No. 1. Visiting Card.
- No. 2. Letter to Col. dated 15-2-17 written by the complainant.
- No. 3. Reply to above letter dated 16-2-17.
- No. 4. List of Ornaments dated 19-2-17.
- No. 5. Copy of the Promissory Note dated 19-2-17.
- No. 6. Draft of letter written by the Colonel.
- No. 7. Letter dated 20-2-17.
- No. 8. London Address of the Col. (On a visiting card).
- No. 9. Copy of a draft dated 22-2-17.
- No. 10. First advice dated 3rd May 1917.
- No. 11. Telegram.
- No. 12. Advice dated 25th June 1917.
- No. 13. Letter with report dated 28th September 1917.
- No. 14. Certificate from the Advocate General of Bombay.

(Sd.)

P. DAVID,

*Judicial Clerk, Chief Presidency Magistrate's
Court, Bombay.*

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

84

No. 1.

Ganeshi Lall & Son,

The Emporium,
Simla,13 Drummond Road,
Agra.

8 Harkness Road.

True copy.
[SEAL.](Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

85

No. 2.

Ganeshi Lall and Son, Jewellers,

The Emporium,
No. 13 Drummond Road, Agra & Simla.

Delhi, the 15th February, 1917.

To Lieut. Col. Collins, Kapurthala.

DEAR SIR: We trust this letter will find you at Kapurthala.

Since we had the pleasure of attending on you at Bombay we have had done some good luck both in selling and in acquiring a few good things.

It is due to one of these latter dues that I am sending this letter with a special messenger. It is an extremely fine ruby of uncommon size nearly fifteen carat in weight and full of life and colour. In short it is the right thing. We wish to show this to you and shall feel obliged by your letting us know when and where we can attend on you with it along with the other things you had selected in Bombay and which unfortunately I could not stay to sell as I had an engagement previously arranged at Agra.

Further I may add that the big emerald you saw in Bombay with me weighs nearly 20 ratti and not 15 ratti as were thinking.

Yours faithfully,
(Sd.)

GANESHILA LALL.

P. S.—Kindly reply per bearer and oblige.

True copy.
[SEAL.](Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

Guests' House, Kapurthala.

Colonel Collins is much obliged for Mr. Ganeshi Lall's letter and will be glad to see him on Monday at the Cecil Hotel Delhi at Noon. Mrs. Collins wants a good diamond about 8-10 carats.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,

Chief Presidency Magistrate, Bombay.

Messrs. Ganeshi Lall & Son,

No. 13 Drummond Road, Agra, & the Mall, Simla.

No. L. 36.

Agra, the 19th February 1917.

Lt. Col. C. G. Collins, Dr.

To Ganeshi Lall and Sons, Manufacturing Jewellers, Embroiderers & Shawl Merchants, Agra and Simla.

Date.	Description.	Amount.
February 19th.	One uncut emerald & diamond necklace	
	One engraved Emerald about 80 Rattis	
	One Cabushon emerald about 4½ Rattis	
	One Cabushon emerald about 16 Rattis	
	One fine Cabushon Emerald about 17 Rattis	
	One Cabushon star Rubie about 20 Rattis	
	One large sapphire about 11 Rattis	
	One fine small sapphire about 5½ Rattis	
	One Sapphire	£2,500-0-0
	One large emeralds about 19 Rattis	£2,000-0-0
		£4,500-0-0
	Received by cheque on Thos. Cook & Son, Bombay, for Rs. 7,500/-	£500-0-0
	Balance due	£4,000-0-0
	Total	£4,000-0-0
Rs. 4,000/-/-.		

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,

Chief Presidency Magistrate, Bombay.

88

No. 5.

Copy.

£2,000/-.

Delhi, February 19th, 1917.

Sixty days after date, I promise to pay to Messrs. Ganeshi Lall and Son or order, the sum of two thousand pounds sterling for value received.

(Sd.)

CHARLES G. COLLINS, *Lt. Col.*

Payable at Messrs. E. Curtice & Co., 8 Clarges Street, London, W.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

89

No. 6.

Lt. Col. C. G. Collins has told that he will call in on you next Thursday the 22nd instant and will sign a sixty day draft on his Agents in London payable to ourselves and we should be obliged if when you have collected this draft if you will credit the same to our account.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

90

No. 7.

Ganeshi Lall & Son,

The Emporium,

No. 13 Drummond Road, Agra & Simla.

The 20th February, 1917.

To Messrs. Ganeshi Lall & Son, Jewellers, of Agra, Delhi.

DEAR SIR:- I have taken delivery of all the stones and necklace which I have bought yesterday morning to the value of £2500 and paid a cheque for £500 and given you a sixty days' draft on my Agents in London for £2000.

I have also received from you the large emerald I bought of you yesterday evening weighing 19 Rattis about the value of £2000 for which I am going to give you a sixty days' sight draft on my Agents

in London, through your Agents Messrs. Thos. Cook and Son in Bombay on Thursday the 22nd of this month.

Yours faithfully,

(Sd.)

CHARLES G. COLLINS, *Lt. Col.*

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,

Chief Presidency Magistrate, Bombay.

91

No. 8.

Lieut. Colonel C. G. Collins,
51 South Street, Park Lane, W.

Howe Battalion

Royal Naval Division

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,

Chief Presidency Magistrate, Bombay.

92

No. 9.

Copy.

No. B695,928.

£200/-.

Bombay, 22nd February, 1917.

Sixty days after date pay Ganeshi Lall and Son or order the sum of two thousand pounds Stg. and charge my account.

(Sd.)

CHARLES G. COLLINS.

To Messrs. E. Curtice & Co., 7 Clarges Street, London, W.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,

Chief Presidency Magistrate, Bombay.

93

No. 10.

Thos. Cook & Son.

Bombay, 3rd May, 1917.

Messrs. Ganeshi Lall and Sons, Agra.

DEAR SIRS: We beg to confirm our telegram of today reading as follows: "Both Collins Drafts unpaid marked no advice."

We shall be glad to receive your further instructions in the matter.
Yours faithfully,

(Sd.) Per Pro THOS. COOK & SON.

True copy.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

94

No. 11.

Post and Telegraphs.

DF LF 286 Yokohama I MS 12 LCD Ganeshihall Agra

Hold Drafts Sixty Lays Longer Delay Unavoidable.
COLONEL COLLINS.

True copy.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

95

No. 12.

Thos. Cook and Sons.

Bombay, 25th June, 1917.

Messrs. Ganeshi Lall and Son, 13 Drummond Road, Agra.

DEAR SIRS: We beg to inform you that we have to day received a cable from our Head Office dated 22nd June reading as follows:

"Referring to your telegram of sixth Collins both drafts referred to not paid answer no advice."

and we have today wired you accordingly.

Yours faithfully,
(Sd.) Per Pro THOS. COOK & SON.

True copy.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

96

No. 13.

Harry Morser.

37 Hatton Gardens,

London, 28th September, 1917.

Mr. Ganeshi Lall, Agra.

MY DEAR FRIENDS: I beg to acknowledge receipt of your esteemed letters and different cables and confirm my different cables which no

doubt you have received. I had to postpone writing to you fully until such date when I should be in a position to give you full information regarding Collins. If you have not heard from me at once in answer to your cables, please do not think for one moment that I have neglected the matter but I simply did not care to telegraph unless I had definite news. I also had the visit to Messrs. Sanderson Solicitors whom I have given every information and assistance that I could, I personally did my very best to find out all I could about this man, but when I saw that such channels as I should be compelled to use were close to me I considered it in your own interest to employ a private detective who has far more facilities than I have. I found this man in Mr. Brewster Kemp who has been 35 years with Scotland Yard, I arranged with him the fee and his investigations are embodied in the enclosed report a copy of which I have given to your Solicitors. I am extremely sorry that you have been the victim of a swindler, and up to the time of writing it has been impossible to find out where Collins is. Mr. Kemp is now working hand in

hand with your Solicitors and you may rest assured that every-
97 thing is being done and watched by me in your interest.

My opinion is that when Parliament is sitting again to approach his brother who may settle the matter. At present the whereabouts of his brother are unknown, but he is sure to come to London when Parliament opens. I am enclosing herewith a statement of my expenses, and I should be very glad if you will kindly remit same. I trust and pray that you may be spared this heavy loss and you can rest assured that everything is being done in your interest. I hope you are enjoying excellent health.

With kindest regards from my family to you and yours,
I am always,

Your sincere friend,
(Sd.)

HARRY MORSER.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

98 Private and Confidential.

The Holborn Stadium.

85 High Holborn, W. C. 1,

13th September, 1917.

Henry Morser, Esquire, 37 Hatton Garden, E. C. 1.

Re Charles Glen Collins.

DEAR SIR: I have to report that, acting upon your verbally conveyed instructions, having made inquiries respecting the above man, the information I have been able to obtain so far is as follows:

He is a member of the family of William Collins Sons and Company Publishers and Stationers, who carry on business in Glasgow, London and Australia, but he is in no way connected with the business. He is one of four brothers, two of whom, Godfrey and William, are Directors of the firm in question.

He formerly obtained a commission in the Gordon Highlanders and served with distinction in the Boer War. He subsequently went to the United States, where he married a Miss Wheeler, daughter of Mr. Wheeler, a member of a famous sewing machine manufacturing firm.

At the outbreak of war with Germany, he joined the Naval Brigade and was appointed to the Command of the Howe Battalion, and served during the Gallipoli campaign, he eventually returned to London and lived at various addresses.

The address: 51 South Street, Park Lane, is a large block of residential flats. He has never lived there; he occasionally visited a Mr. and Mrs. Muntz. Mr. Muntz is believed to have served with Collins as a brother officer in the Gallipoli Campaign. He divorced his wife and Collins was cited as the co-respondent.

99 Collins and Mrs. Muntz suddenly left the country together and went to Colombo, thence to Bombay; later to New York and they were recently heard of in Norway. It is believed that Mrs. Muntz has been working with him in India, contracting these debts.

Charles Glen Collins was adjudicated a bankrupt in this Country on the 19th August 1904, with heavy liabilities. A second petition in bankruptcy was filed against him in 1916, but he did not surrender to his examination.

On the 16th March 1912 he was arrested for obtaining money by means of worthless cheques at the Victoria Hotel, Sligo, but the charge was subsequently withdrawn and it is supposed the matter was settled by his friends.

He is also believed to have obtained money by means of worthless cheques in Vienna.

One of his brothers is Major Godfrey Pattison Collins, former Secretary to Colonel Seely, and now private secretary to Mr. Gulland M. P. who is a Liberal Whip to the present Government.

I am informed that Mrs. Collins is about to divorce her husband in New York.

Mrs. Muntz is the daughter of a Mr. Benn, a very rich iron founder and I am seeking an early interview with him and also with Major Godfrey Collins, with a view to obtaining, if possible, the present address of Charles Glen Collins and possibly a settlement of this account or some security for it.

I understand that the Official Receiver recently obtained possession of some shares left to Collins under his grandfather's Will and these have been disposed of for the benefit of the Creditors.

100 I have interviewed Mr. Edward Curtice of 8 Clarges street Piccadilly, who has furnished flats at this address; he also has the Curzon Hotel, Broadstairs, and the Philbeach Private Hotel, Kensington. He informed me that he has known the Collins fam-

ily for many years, especially Charles Glen Collins. The last he heard of Collins was from Bombay, when he, Collins, informed him that he proposed purchasing certain Oil properties in South America; later he sent word by a friend (unknown to Curtice) that he was forwarding to Curtice a sum of £11000 to cover certain liabilities contracted. This money, however, has not yet arrived, but Curtice states that he is expecting to hear from Collins in the near future, and has promised to acquaint me at once should he hear.

Mr. Curtice states that he was not aware that the Bill had been drawn on him until someone called to collect it.

I am pursuing the inquiry with a view to learning the present whereabouts of Collins and I hope to be able to obtain this information very shortly when a further report will be submitted.

I am, dear sir,

Yours obediently,
(Sd.)

WILLIAM B. KEMP.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,

Chief Presidency Magistrate, Bombay.

101

No. 14.

In the Court of the Chief Presidency Magistrate, Bombay.

Case No. 662/W. of 1917.

BRIJMOHAN LALA RAMKISSONDAS, of the Firm of Ganeshi Lall and Sons, Complainant,

vs.

Colonel CHARLES GLEN COLLINS, Accused.

I, Thomas Joseph Strangman Advocate General of Bombay India do hereby certify:

1. That the offence with which the accused is charged is that of cheating and dishonestly inducing delivery of property.

2. That the offence of cheating and dishonestly inducing delivery of property is punishable under section 420 of the Indian Penal Code with either simple or rigorous imprisonment (the latter being imprisonment with hard labour) which may extend to seven years.

Dated this 30th day of November 1917.

(Sd.)

T. J. STRANGMAN,
Advocate General of Bombay.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,

Chief Presidency Magistrate, Bombay.

102

Chief Presidency Magistrate's Court.

Bombay, 1st December, 1917.

I, A. H. S. Aston, Esquire, Chief Presidency Magistrate, Bombay, do hereby certify that a *prima facie* case of an offence of obtaining property by false pretences under section 420 Indian Penal Code within the jurisdiction of my Court in respect of jewellery valued at £2000 has been established against the accused Lieut. Col. Charles Glen Collins and that the alleged act constitutes under the law in force in the Bombay Presidency an offense punishable under the Indian Penal Code with imprisonment of either description (rigorous or simple) for seven years and a fine.

Given under my hand and the Seal of the Court this 1st day of December, 1917.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

103 *Motion of Charles Glen Collins to Dismiss.*

Filed Oct. 26, 1918.

U. S. District Court, Eastern District of Louisiana, New Orleans Division.

No. 15928.

In re Extradition Proceedings of CHARLES GLEN COLLINS.

Now comes Charles G. Collins whose extradition is sought in these proceedings and moves the Court to dismiss the affidavit herein and to discharge him from custody without day because this Court is without jurisdiction to try appearer or to hear and pass upon the questions raised by the affidavits or the rights of this appearer on the grounds and for the reasons following, to wit:

1st. Because that heretofore, to wit: on the 13th day of February, 1918, Affidavit was made by Thomas F. Carlisle, His Britan-ic Majesty's Consul General at New Orleans against appearer herein, Charles G. Collins before R. H. Carter, United States Commissioner of the Eastern District of Louisiana for the alleged offenses, matters and things referred to and declared upon in the affidavit by Gerard M. Loly, British Vice Consul at the City of New Orleans which is the basis of these proceedings, which said affidavit by the said Thomas F. Carlisle, His British Majesty's Consul General was for the purpose of having this appearer extradited from this Country where he then was and now is to British India which is the purpose of the affidavit in these proceedings by the said Gerard M. Loly, British Vice Consul at the City of New Orleans; that upon the said affidavit of Thomas F. Carlisle, His Britan-ic Majesty's Consul General at New Orleans a warrant of arrest was issued by the said

R. H. Carter, United States Commissioner of the Eastern District of Louisiana and this appearer was thereupon arrested at the City of New Orleans by the United States Marshal of the Eastern District of Louisiana acting under the authority of the said warrant issued by the said R. H. Carter, United States Commissioner for the Eastern District of Louisiana and this appearer was duly arrested
 104 under the said affidavit which said affidavit is still pending and undisposed of.

2nd. Because the affidavit of Gerard M. Loly, British Vice Consul is not such as is required by law does not comply with the law and did not justify the issuance of the warrant of arrest and does not justify the holding of this appearer thereunder for the reasons.

(a) The said affidavit does not charge this appearer with having committed any crime and particularly does not charge him with having committed a crime for which, under the treaties between this Country and Great Britain, this appearer may be extradited.

(b) Because even if the said affidavit does charge such a crime herein immediately above referred to, the same is not made in the manner and form required by law by the said treaties particularly because the said Loly, Affiant therein, does not state the source of his information upon which his alleged affidavit is made, nor does he annex thereto any paper, document, copy or evidence which justifies the affidavit, nor does he give the ground of his belief of the truth of the matters and things stated in the said affidavit.

Wherefore, this appearer objects to and protests against this Honorable Court hearing any evidence, either orally or documentary, upon the affidavit hereinabove referred to and prays the Court to dismiss the said affidavit and to discharge this appearer without day.

(Signed)

CHARLES GLEN COLLINS.

(Signed) J. ZACH SPEARING, *Atty.*

105

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans:

Before me the undersigned authority personally came and appeared Mr. Charles G. Collins who being duly sworn deposes and says: That all of the allegations in the above and foregoing petition are true and correct.

(Signed)

CHARLES GLEN COLLINS.

Sworn to and subscribed before me this 22nd day of October 1918 at the City of New Orleans, State of Louisiana.

[SEAL.] (Signed) J. ZACH SPEARING, *Not. Pub.*

106 United States District Court, Eastern District of Louisiana.

No. 15927, 15928.

In the Matter of Extradition Proceedings of CHARLES GLEN COLLINS.

Proceedings Had Before the Honorable Rufus E. Foster, Judge
United States District Court, Eastern District of Louisiana, on the
30th Day of October, 1918.

Appearances:

Judge R. H. Marr, representing the Petitioner.
J. Zack Spearing, Esq., representing the Defendant.

107

Offer.

Judge Marr: We offer certified copy of the proceedings had in the court of the Chief Presidency Magistrate, Bombay, with all the certificates thereto attached; that is in the charge of Ganeshi Lall & Sons, Jewelers.

Offer.

I next offer a certified copy of the proceedings had in the court of the Chief Presidency Magistrate, Bombay, in the matter in which the accused is charged with having fraudulently obtained jewels from the firm of Poohomull Brothers.

Offer.

I offer in evidence the evidence taken before Sir John Dickinson, Knight, Chief Magistrate of the Police Courts in London, and the evidence taken in Glasgow before Alexander Stuart Duff Thomson.

And in connection with these offers are attached documents, certificates and exhibits annexed to the testimony, and, further, the admission that the accused at bar is the same person who stands accused in Bombay and for whom extradition has been applied.

Mr. Spearing: I will not make the admission that he is the same person that stands accused, because I don't want to admit that he is accused, but this is the person (referring to Charles Glen Collins) that is cited.

The Court: You will admit that he is Lieutenant Colonel Charles G. Collins, late of the British Army?

108 Mr. Spearing: Yes; and that he is the person referred to in these papers.

Objection.

Mr. Spearing: I object to the reception of any of the documents, papers, certificates or copies that have been offered in evi-

dence, on the ground that they do not relate to and do not show the charge against the accused for an offence covered by any treaty between the Government of Great Britain and the Government of the United States, and they do not charge any offence which, under any treaty between those two governments, is extraditable; that the papers offered in evidence relate to an offence entirely separate, different and distinct from the offence charged in the affidavits filed in this court.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

Mr. Spearing: Reserving the benefit of the objection made to the admission of any of the papers and documents in evidence, I make the following objections:

First. That the certificates are not in proper form—

The Court: Which certificates are you talking about now?

Mr. Spearing: The certificate—

The Court: Of the Consul?

Mr. Spearing: Of the Consul.

109 The Court: Well, let's see what is the matter with that; what is wrong with that certificate?

Mr. Spearing: There is another certificate there, the certificate—

The Court: That is the certificate of the Consul. Is that all right?

Mr. Spearing: That seems to be all right. The certificate of the Chief Presidency Magistrate in one case, it does not refer to the number of pages, it simply says the — number of pages. That is in the Pohoomull matter, and in the other, it refers to the foregoing pages from 1 to 29, I believe it is, whereas the "foregoing" if you give it its true and technical meaning, means that which precedes and not that which follows. That is, all the papers and documents in there, in my humble judgment, are not admissible under any statute, and I am going to make special objections to them, but we are dealing now, as I take it, with a matter that is entirely technical, we are dealing with papers that we have absolutely no opportunity of comparing with the originals, and they must, I take it, speak for themselves, and that when an officer gives a certificate—

The Court: There are twenty-nine pages here. Then he says "the foregoing" instead of "the following," and the only difficulty with that is that one is stuck in front, and if he had stuck it on the back, it would have been all right. I overrule that objection. It is all sealed up.

110

Objection.

Mr. Spearing: Now I object to any of the papers or documents. Neither one of the sets from Bombay, either by Pohoomull Bros. or by Ganesho & Sons has the warrant of arrest and the copy of the original deposition or depositions appended to the original warrant of arrest issued.

The Court: You don't object to the warrant of arrest, that is this first document here signed by A. H. S. Aston; that is all right; is it?

Mr. Spearing: There are two warrants of arrest.

The Court: Now then, the affidavit—

Mr. Spearing: In one case, the affidavit of the representative of Poohomull and in the other case the affidavit of the representative of Ganeshi & Son.

The Court: That is down to the certificate on page 4. You don't object to that. You don't object to page 5 either, that is, the certified copies of the draft given and the letter written by Colonel Collins.

Mr. Spearing: Your Honor will see that there is an affidavit—I don't know which set your Honor has.

The Court: I have the first one that Judge Marr offered.

Mr. Spearing: You will find—

The Court: I have the one where he certified, "the foregoing twenty-nine pages," and it is headed "In the Court of the Chief 111 Presidency Magistrate, Bombay." Now then—

Mr. Spearing: The information of an Indian named Birjmohan Lala Ramkishandas, at Bombay, Manager of Ganeshi Lall & Sons.

The Court: Birjmohan Lala Ramkishandas.

Mr. Spearing: That is the affidavit upon which the warrant issued. As I construe the section of the Revised Statutes, that is all that can be admitted from India?

The Court: Why?

Mr. Spearing: Because the section of the Revised Statutes provides:

"In every case of complaint, and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended, if they are authenticated in such manner as would entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party escaped. The certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any paper or other document so offered is authenticated in the manner required by this section."

112 The Court: Isn't there another section that admits the depositions?

Mr. Spearing: If there is, I am not familiar with it.

Judge Marr: Here is Section 5271:

"In every case of complaint and of a hearing upon the return of the warrant of arrest, any depositions, warrants or other papers offered in evidence shall be admitted and received for the purpose of such hearing, if they shall be properly and legally authenticated so as to entitle them to be received as evidence of the criminality of the person so apprehended, by the tribunals of the foreign country from which the accused person shall have escaped, and copies of any such depositions, warrants or other papers, shall, if authenticated according to the law of such foreign country, be in like manner received as evidence; and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be

proof that such deposition, warrant or other paper, or copy thereof, is authenticated in the manner required by this section."

Mr. Spearing: That is the identical section I read. It says, "the depositions upon which an original warrant of arrest issued." It does not say "any depositions"; it confines and restricts it to "depositions upon which an original warrant of arrest issued, and that is the affidavit.

The Court: Which warrant does that refer to? That refers to the warrant of the Commissioners in this country, does it not?

113 Mr. Spearing: On the contrary, it provides for the certificate by the Consular Agent "In every case of complaint and of a hearing upon the return of the warrant of arrest, copies of the depositions upon which an original warrant in any foreign country may have been granted, certified under the hand of the person issuing such warrant, and attested upon the oath of the party producing them to be true copies of the original depositions, may be received in evidence of the criminality of the person so apprehended."

The Court: Here is this certificate: "I the undersigned, being the Chief Presidency Magistrate of Bombay, do hereby certify that the typed matter contained in the foregoing twenty nine pages is a true copy of the information of Brijmohanlal Lala Ramkishandas, of the firm of Ganeshi Lall and Son, Bombay, taken on solemn affirmation before me on the 1st day of December 1917 and of the depositions of the said Brijmohan Lal Lala Ramkishandas, Dattatraya Ranchandra and Arthur Fuller in support thereof, sworn and taken before me on the 1st day of December 1917, and of the list of exhibits and of exhibits thereto marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 and of my certificate." That identifies them all with the papers, this bunch I have before me at any rate.

114 Mr. Spearing: There are two bunches with the same certificate.

The Court: Let's get through with this one first, because I will look at them as we go along. Here is the information of Brijmohanlal, age twenty-five, occupation jeweller, residence Calcutta. Then he goes on to identify these various exhibits.

Mr. Spearing: I am urging that the only one of that bunch there that can be admitted in evidence is the affidavit commencing "In the Court of the Chief Presidency Magistrate at Bombay, the information of Brijmohan Lala Ramkishandas, of the firm of Ganeshi Lall & Sons," so that, I take it, is the affidavit on which the warrant issued; that is the charge.

The Court: According to this certificate, everything in this file was offered before this Indian court, and the warrant issued on all of this in here; so, as far as that goes, I will overrule that objection. Now I will take up those others.

Mr. Spearing: I except to the ruling of the Court, and reserve this note in lieu of a formal bill of exceptions.

Mr. Spearing: The other one is the same, and there is no use of any longer taking up your Honor's time on that second one.

The Court: There are three of them.

Mr. Spearing: There is a third one to which that objection is good, I think.

The Court: This is the evidence of John Richard Campbell Howie and Edward Curtice.

115 Mr. Spearing: Those affidavits, that third one, may it please your Honor, you will find those are affidavits taken in London and in Glasgow.

The Court: James Paterson, Hugh Allan, A. S. D. Thomson, John Richard Campbell Howie and Edward Curtice.

The Court: Those were taken on the 22nd of June 1918, and the ones in Glasgow were taken coincident with them, either a day or two before or afterwards. I submit that as to those, that those sections of the Revised Statutes must be applied.

The Court: Here is the certificate from the Under Secretary of State for India that these documents would be received for the same purpose in India.

Mr. Spearing: Yes, but the Revised Statutes require something else than that. The Revised Statutes, I submit, do not authorize the reception by this Court in evidence of any documents or any testimony that was taken after the warrant of arrest issued.

The Court: They do not?

Mr. Spearing: I think that the Revised Statutes is clear. The test is whether the documents offered in evidence would be admissible in the foreign country which requests the extradition, and the sufficiency of that evidence is a question to be decided by your Honor. I take it that your Honor can only receive the evidence taken in a foreign country and out of the presence of the accused, such 116 evidence as is affirmatively authorized by the statute, and that you cannot receive in evidence any other testimony, whether it be oral or documentary. It seems to me that the language of this statute is so plain that it does not admit of two interpretations, and that my friend on the other side is entirely wrong when he says that your Honor is governed in the admissibility of the testimony by the certificate of the foreign officer. That certificate cannot control your Honor, unless, under the law of this country, that certificate is made sufficient for the purpose.

The Court: I will sustain the objection as to the depositions from Glasgow and London.

Judge Marr: I reserve a bill to the ruling of the Court.

Mr. Spearing: I further object to the certificate of A. H. S. Aston, Chief Presidency Magistrate on the Ganeshi Lall affidavits and the certificate of Chunilal H. Setalvad, Acting Chief Presidency Magistrate. I object to those certificates on the ground that the certificates are no part of the testimony or depositions which were taken upon which the warrant was issued, and are but the expression and conclusion of the persons giving the certificates, which is not justified by the law, and is not binding upon this Court.

The Court: I don't think it makes any difference one way or the other. I will sustain that.

117 CHARLES GLEN COLLINS, being duly sworn, testified as follows:

Direct examination.

By Mr. Spearing:

Q. What is your name?

A. Charles Glen Collins.

Q. You are the party referred to in these affidavits from India, which we have just been discussing?

A. Yes sir; I am.

Q. You were in India at the time these various transactions are alleged to have taken place?

A. Yes sir.

Q. Were you alone, or did you have anyone with you?

A. I had people with me.

Q. Who were they?

A. My fiancee, Mrs. Muntz, and her friend, Mrs. Olsen.

Q. You subsequently married Mrs. Muntz?

A. Yes sir.

Q. And that is the lady here, sitting in the court room now?

A. It is.

Q. Mrs. Olsen is dead, is she?

A. She died last Thursday in San Francisco, in a hospital outside of San Francisco.

Q. And you have been endeavoring to have her come here to testify in this case?

A. We did; certainly.

Q. And upon the day the case was fixed for a hearing last Friday, you received a telegram stating that she had died the day before?

118 A. Yes sir.

Q. Where was the party consisting of yourself and Mrs. Olsen and the present Mrs. Collins made up?

A. In Christiania, Norway, on August 30, 1916.

Q. What was the occasion of going to Christiania; who lived there?

A. Mrs. Olsen had a country home there, outside.

The Court: What is the purpose of this testimony?

Mr. Spearing: I am just leading up to show how this transaction came about, and the good faith of it, to disabuse the mind of the Court that anything like a false pretence——

The Court: Do you think that any testimony in defence is relevant, or anything of that sort?

Mr. Spearing: Why certainly, if I can prove he didn't make any false pretences.

The Court: It doesn't make the slightest difference if he did or did not. It is a question for the court in India.

Mr. Spearing: I submit, if I prove as a matter of fact, there was no false pretence——

The Court: I have nothing to do with that whatever. The question of identity and sufficiency of these depositions is the only thing before me.

Mr. Spearing: That simply means that we can't take any testimony whatever.

The Court: It does not make any difference if Colonel Collins should testify he made no false pretence, or anything of that sort. That is a question for the court over there, and not for this court.

Mr. Spearing: Of course if your Honor is going to rule that way, I will have to submit, but, with all due deference, I think your Honor is wrong.

The Court: I would like to see some case that says it is admissible.

Mr. Spearing: There are a number of cases which have gone up admitting testimony on behalf of defendant.

The Court: No question of defence can come before this Court in an extradition matter. That is a question for the court when the accused is tried in the country that requests his extradition. The only question here is the question as to the identity of the accused and the question whether or not he was in India at the time this alleged offence is supposed to have been committed. There are two things the defendant can show: either he is not the man wanted, or that he was not there at the time the offence is supposed to have been committed. Now he was there at the time and he admits he is the man.

Mr. Spearing: There is no doubt about that.

The Court: I will exclude everything else.

Mr. Spearing: To make up the record, counsel for the accused 120 offers to prove that there was no false pretence on the part of this accused, but that, on the contrary, he made a full and absolute disclosure to the complainants, Pohoomull Brothers and Ganeshi Lall and Sons, and that they were fully advised of his financial condition and of the plans which he had, and the means which he had, of paying for these jewels.

The Court: What Colonel Collins is going to testify may be diametrically opposed to what the evidence is before me on these certificates, but I can't hear it.

Mr. Spearing: Will your Honor permit me to dictate into the record what I propose to prove by Mr. Collins.

The Court: Yes.

Mr. Spearing: I propose to prove by Colonel Collins that while Colonel Collins was in Christiania, Norway, he, in conjunction with Mrs. Olsen, by speculating in some shares of a steamship corporation, made a very large sum of money, approximately \$150,000, or thirty thousand pounds sterling in the current money of Great Britain; that, shortly after making the profit above mentioned, said Mrs. Olsen, Mrs. Muntz and Colonel Collins started on a trip of rest and recreation, Colonel Collins being previously engaged in an active and vigorous share, as Commander of the Howe Battalion of the

British Army, with the rank of Lieutenant Colonel, in what

121 is known as the Gallipoli Campaign during the war which started in July and August 1914, and is still in progress, and Colonel Collins having been invalided home on account of illness. That he had previously taken part in the Boer War, as an officer in the British Army. That after making this large profit above referred to, the party, consisting of himself, Mrs. Olsen and Mrs. Muntz, started on a trip; that among the countries visited by the said party as thus composed were Japan, China and British India; that while in Yokohama, Japan, during the month of October 1916, the said Mrs. Olsen and Colonel Collins had an interview with Mr. William H. Smith, a resident of the City of Boston, State of Massachusetts, at that time and now a resident of the City of St. Louis in this country, and at the time that the party were in Japan and China, Mr. Smith was temporarily located in Japan. That the accused and Mr. Smith had known each other some ten or twelve months previously and had done business together; that Mr. Smith sought an interview with the accused, and Mrs. Olsen was brought in because the profits which were made in the speculation or deal or transaction referred to were equally hers. That the said Smith stated substantially to the said Mrs. Olsen and to accused that he had the option to purchase certain very valuable oil leases in what was then known as the Goose Creek Oil Territory, a few miles out of the

122 City of Houston, State of Texas, and also other very valuable oil leases in or near the City of Tampico in the Republic of Mexico which were controlled by one Charles D. Mitchell, a resident of the City of Houston, State of Texas, who was at that time the Vice-President and General Manager of the American Petroleum Corporation, incorporated under the laws of the state of Delaware, but operating in the Goose Creek Petroleum oil Fields, near the City of Houston; that the said Smith represented to the said Mrs. Olsen and to accused that there was an opportunity to make exceedingly large profits out of the said oil leases and lands, but that he, the said Smith was unable to finance the same and desired to secure financial assistance from some person or persons who were able to give it, and who would share the profits with him; that though the said Smith was previously unknown to the said Mrs. Olsen, he was known to and had an acquaintance with the accused, they having met and had dealings on prior occasions in the City of Boston and the territory adjacent thereto, which were visited by accused in former years; that after conferences and negotiations, the said Mrs. Olsen, the said Smith and accused entered into an agreement in writing dated at Yokohama, Japan, the 27th day of October 1916, by which the said three parties associated themselves for the purpose of financing, promoting or selling said oil property or leases situated in

123 Tampico, Mexico, and in the Goose Creek Oil Section, and that with that end in view the sum of two thousand pounds sterling of British currency, or approximately ten thousand dollars American currency, was paid and handed to the said Smith for the purpose and with the understanding that he would leave for the United States to consummate the purpose which the said parties then had in view; that the said Smith did in fact shortly thereafter leave

for the United States, with the said purpose in view; that in due time it became necessary to make further advances to the said Smith, or the said Mitchell with whom the said Smith had gotten into communication and with whom he was negotiating for the acquisition of the said oil properties both in Texas and in Mexico; that with the consent and co-operation of the said Mrs. Olsen, the sum of twenty-five thousand dollars was cabled to the said Mitchell in connection with the said transaction; that the said parties had the said oil fields, particularly those in the Goose Creek Section, examined and received most favorable reports of their condition and of the probabilities of large returns and large profits from the transaction and the said Mrs. Olsen, the said Smith and accused determined and agreed with the said Mitchell to acquire from the said Mitchell the oil leases and properties above referred to; that the said Mrs. Olsen and accused anticipated that they and the said Smith

124 would make exceedingly large profits out of the deal; that at that time they were negotiating with George McBain, of Shanghai, China, representing a very large oil syndicate, which was practically the only real competitor of the Standard Oil Company, for the sale of the same options and property to the said McBain for his oil syndicate at a tremendous profit. We further offer to prove that the accused and his party reached Bombay, in British India, about the middle or latter part of December 1916. That intending to remain there for several months, they rented a bungalow residence on Mallabar Hill, adjacent to Bombay, Mallabar Hill being a very fine residence section of Bombay, where they established themselves; that while thus residing at the said residence, they visited the business establishment of Bohoomul Brothers, hereinafter called the complainants, and at various times purchased numerous articles for household and personal use of considerable value in the aggregate, for which the said Mrs. Olsen and accused respectively paid the said claimant, either in cash or by bank checks or bills of exchange, which, when presented, were duly paid; that the said purchases extended over a considerable length of time; that among the articles examined by accused was the jewelry referred to in the affidavit of the British Vice-Consul; that the said claimants persistently urged

accused to purchase the same, notwithstanding accused's refusing to do so on the plea and for the reason as stated to said claimant, that accused did not have with him personally or to his credit at any place sufficient money to justify the outlay of the price of said jewelry for that purpose; that notwithstanding accused's explanation and statement that he was not then possessed of sufficient funds to justify the purchase of the jewelry in question, the complainants continued to press him to make the purchase, frequently visiting accused's residence above referred to with that end in view and offering to sell and deliver the jewelry to accused on credit; that accused explained to the complainants that he and the said Mrs. Olsen were engaged in the oil transaction or deal hereinabove referred to, and that if he realized the profits which he anticipated, he would be in a position and able to purchase and pay for the jewelry referred to; that the complainants offered not only to sell and deliver the

jewelry in question to accused on terms of credit, but offered and insisted upon selling other jewelry upon like terms; that upon purchasing the jewelry in question, accused paid the claimants twenty four hundred and sixty six pounds sterling British currency or its equivalent, on account of the jewelry.

We further expect to prove by the accused that the prices finally agreed upon in the transaction above referred to were only reached after much negotiation, amounting to haggling, and after and 126 not until after the claimant was fully informed and advised on accused's inability to pay the balance of the price of the said jewelry in cash at that time and of his expectation of realizing large profits out of the oil transactions and deals hereinabove referred to.

We further expect to prove by the accused that even after the purchase of the jewelry referred to in the affidavit of the British Vice-Consul, the complainants continued to press and urge accused to purchase other and still more valuable jewelry from them on terms of credit, even sending their representatives with the jewelry to accused on board the steamer on which they left and to other cities which accused's party visited; that accused declined to accede to the requests of the claimants on the ground, and explaining to the claimants, that the said Mrs. Olsen and accused had not yet realized the profits which they anticipated from the oil transactions and deals.

We further expect to prove by the accused that neither he nor Mrs. Olsen nor Smith realized any profit whatever from the said oil deal, but that on the contrary the money which they invested therein is all lost through the machinations of Mitchell from whom they had an option.

We further expect to prove by the accused that accused did 127 not represent himself to the complainants as a wealthy man, except in the manner hereinabove referred to; that he did not represent himself as a partner of the firm of William Collins Sons & Company of Glasgow and London, nor did he represent himself as being at that time a colonel in the Howe Battalion of the Royal Navy Division, though accused had been a lieutenant Colonel of said battalion, and had rendered other services to the Government of Great Britain in the war with Germany which was then being carried on, as well as in previous wars, and that accused did not represent to complainants that he had a right to draw a draft, or is entitled to additional credit, except in the manner and to the extent hereinabove set out.

The Court: I don't think any of that is relevant, Mr. Spearing.

Mr. Spearing: I also want to offer Mr. Smith as a witness.

The Court: He will testify on the same lines?

Mr. Spearing: As far as this refers to. Of course he was not present when the jewels were purchased.

The Court: He will only testify to this oil transaction?

Mr. Spearing: That is all.

The Court: All right.

128 Mr. Spearing: I will offer the witness, Mr. William H. Smith, presently residing in the City of St. Louis.

The Court: This testimony is offered for the purpose of

corroborating the testimony that Colonel Collins would have given regarding the oil transactions?

Mr. Spearing: Yes.

Mr. Spearing: I also offer the agreement and options referred to in the statement of — Colonel Collins would testify to, and the correspondence consisting of letters, telegrams and cables, substantiating the testimony as to the oil deals referred to in the statement of what he would testify to.

The Court: I will exclude that also.

Mr. Spearing: I also now offer in evidence letter from Ganeshi & Sons to Colonel Collins, dated at Delhi February 25th, 1917.

The Court: Was that after the charge was made?

Mr. Spearing: No; before the charge was made. The charges were made in the latter part of 1917, and this was coincident with the purchase of the jewelry.

Mr. Spearing: I also offer in evidence original letter from Ganeshi to Collins, dated February 17, 1917, and the original statement of account furnished to the accused by Ganeshi & Sons, dated February 21, 1917.

129 I also offer cablegram from Ganeshi & Sons to Collins, cablegram being dated Delhi, February 25, 1917, addressed to Colonel Collins at Bombay.

The Court: I will exclude those.

Mr. Spearing: I offer original letter from the attorney or solicitors of Pohoomull Bros. of Bombay, dated July 12, 1917, addressed to Colonel Collins at the Manoir Hotel, and also an original letter from the same parties to Mrs. L. L. Muntz, bearing the same date July 12, 1917.

The Court: I think these are all irrelevant.

Mr. Spearing: Of course I am reserving an exception to the rulings of the Court.

The Court: All right.

Mr. Spearing: I also offer in evidence original letter from Pohoomull Bros., receipts and acknowledgments, by them dated as follows: February 27, 1917, being an acknowledgment of the check for 15,000 rupees, receipt dated February 27, 1917, being in the form of a letter of acknowledgment of a draft for four thousand pounds.

Also letter dated March 3, 1917, in reference to the draft, stating in substance that Pohoomull Brothers had instructed their bankers not to present the draft, also guarantee dated January 21, 1917, referring to a silk robe, and a statement showing the weight of certain jewelry.

The Court: I exclude that. Those are all along the line of showing it is a commercial transaction.

130 Mr. Spearing: Yes; purely and only a commercial transaction.

The Court: It was a commercial transaction?

Mr. Spearing: Certainly it was.

The Court: I will make the same ruling. I will exclude it all.

Mr. Spearing: I also offer in evidence numerous and various let-

ters and certificates, showing the military standing and title of the accused, before and after he was in India, but all before the charges were brought.

The Court: I think they are no more relevant than the others. I will exclude those. Is that all, Mr. Spearing?

Mr. Spearing: Yes sir.

The Court: I will look those documents over. I can't do it right now. Let the case go over until to-morrow morning.

Hearing resumed pursuant to adjournment.

Mr. Spearing: May it please the Court. *It* the risk of being thought entirely too persistent, I am going to simply call your Honor's attention to the provisions of the treaty between this country and Great Britain as to the form of trial, if your Honor will permit me to do so. I will read Article 10 of the treaty of 1842, which

131 is the extradition treaty, or the treaty which contains the extradition proceedings, the subsequent treaty or treaties merely adding to the crimes for which extradition may be had. It reads: "It is agreed with the United States and Her Britannie Majesty * * * deliver up those charged with the following offences" (naming them). "Provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been there committed." Provided that it shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found as would justify his apprehension and commitment for trial if the crime or offence had been there committed. And then it goes on giving the jurisdiction and so forth.

A case very much in point is in the 25th Federal, case of Kelly, which was a case in Minnesota, 25th Federal, p. 268, *In re Kelly*, the syllabus of which reads: "On the examination of the party before the United States Commissioner in the State of Minnesota in extradition proceedings under the treaty of 1842 with Great Britain," which is the one I just read there, "he has the right to examine witnesses in his own behalf." Now, there are other cases to the same effect—

132 The Court: Did you look at this case of Charlton?

Mr. Spearing: I looked at that case; yes.

The Court: You see that disposes of your contention about the examination that you request.

Mr. Spearing: I beg your pardon?

The Court: I say it disposes of your contention.

Mr. Spearing: You mean with reference to the calling of witnesses from another state?

The Court: Yes sir.

Mr. Spearing: It merely says it didn't change the rule of evidence that theretofore existed.

The Court: That was in August of 1882?

Mr. Spearing: Yes, that is the one I read, and it does say it doesn't increase the right to give testimony, but that was a case in New York, that case, and this is a case here, in Louisiana, where it is well known and axiomatic that the accused, before a committing magistrate has the right to put in any testimony in his own behalf, and the court, upon considering the testimony, determines whether or not he should be committed, and so your Honor must determine whether or not, upon all of the facts of the case, not merely an ex parte showing. This is more than a Grand Jury hearing. True in a Grand Jury—and that is referred to in the Charlton case—before a Grand Jury there is no compulsion to hear witnesses on behalf of the defendant, or the accused, but this is an open hearing, this is not a Grand Jury hearing, and this is on a hearing, as I conceive the law, as though your Honor was sitting as a committing magistrate, and must determine in your position here whether or not this party must be committed to trial in India, and must determine that, not upon merely the ex parte testimony of those parties who live in India, but upon a hearing according to the laws of Louisiana, as it seems to me, as clearly set out in the extradition treaty. I submit with all seriousness, may it please the Court, where the treaty itself provides that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive of person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had been committed there.

Now suppose that were here, in this city, and that Colonel Collins stood charged by those gentlemen from India living here, with having bought those goods under false pretences, just as they have charged him with having done there, and Colonel Collins was haled before the committing magistrate, whether it would be before the First or the Second Criminal Court, depending on which side of Canal Street the offence was said to have been committed, 134 he would determine whether or not by the testimony before him for the State and for the accused, the accused should be committed for trial. Now it is clear, if your Honor does not agree with me, that there are cases where a person is arrested, he cannot be taken out of that jurisdiction for trial on this charge—there is that case where the person was attempted to be taken to another state, because it was contended that the judge of that state was sitting closer, so far as miles were concerned, closer in distance to where the man was arrested than was the judge of the district in which the marshal was acting, and the court held that the man arrested be returned to the district—meaning the state—in which he was arrested, and that the trial must be held according to the laws of that state. In this case in the 25th Federal—and there are others along the same line—all of these cases have heard testimony—and in that case in Minnesota, the court held that, according to the laws of Minnesota, the person whose extradition was sought, was entitled, if he had been charged with the same offense in Minnesota, he was entitled, under the laws of Minnesota, to have a hearing and to put in evidence in his own behalf, and, under those circumstances, he was entitled to

do it on extradition proceedings. That is what we are seeking here.

If the rule were as your Honor ruled this morning, why it is 135 easy to establish the identity of the person; Colonel Collins' identity can be established; there is no necessity of admitting it; there is no necessity of denying it, because it can be established he was there; there wasn't any question about that, and if those are the only two points that can be heard upon an extradition procedure, then I submit, if the Court please, that anyone who has a personal, professional or commercial claim against another, all he has to do is to make affidavit setting out facts and circumstances, and the party must be taken to that foreign country, whether close or near, to answer the charge there, with a result that no one knows. I submit that is not the law, and moreover, this country has sought to conserve and protect the rights of those who sought an asylum, and, if you will, whether it was justifiable or not, those who were found in the state, to give them the rights they would have if charged with a similar offence under the laws of that state where they may be. Take that testimony, your Honor, as before you there. It places this accused at a very very great disadvantage. True your Honor has held that it is admissible, and that the certificate as given is admissible, but your Honor must conclude that that is nothing but a lot of hearsay evidence. As I recall it, there is in this letter from those London 136 solicitors to a man living in Bombay, telling their London solicitors, telling their clients in Bombay, what their investigations in London—not under oath—none of those letters are under oath—why they produce that letter to the judge in Bombay, and it is in the record, and your Honor has admitted it as though the man who is presumed to have written that letter had absolutely testified to the facts. You have a letter from a man by the name of Morser to Ganeshi & Sons, stating his investigation, and he finally concluded it was necessary to employ a private detective, and then you have the report of the private detective. Why if that is admissible, anybody that is found in this country—

The Court: The certificate says it would be admissible.

Mr. Spearing: It would not be admissible here.

The Court: The certificate says it would be admissible.

Mr. Spearing: I see, but it would not be admissible here. Your Honor has admitted it already because the certificate of the United States Consul is there, but if it is admissible here—

The Court: All of this evidence was admitted before the magistrate.

Mr. Spearing: The magistrate, yes, and the United States Consul has said that it is admissible there, but your Honor knows it 137 would not be admissible here; your Honor would not admit that testimony here if the accused was charged with an offence here and it was attempted in this country to offer in evidence on any trial, civil or criminal, a letter from an attorney—

The Court: Yes, but they may have different rules of practice if they want to.

Mr. Spearing: If they want to, among their own citizens or citizens of other countries that are found there—they have got to submit to it; but this treaty, I submit, may it please the Court, is to the con-

trary; this treaty says that the hearing shall be—not according to the rules of the country seeking his extradition—but according to the rule of the country, the rules of the place, whether it be Louisiana or California or Ohio or Maine, the rules of the place where the accused is found.

The Court: But that still does not make this inadmissible.

Mr. Spearing: No sir; not under the certificate. I only mention that character of testimony that is in there to show what a hardship it is on the man who is arrested in a state like this and is sought to be taken to a place like India, where they admit testimony of that kind, and it may be that the officials, the high officials of Great

Britain and of this country, concluded that they wouldn't be
138 willing to give up the person who is even temporarily in that

country, even though, if you will, with a bad purpose, though in all seriousness I don't believe that the accused was here for a bad purpose, but they were not willing to give up the party unless after hearing, as it states here, according to the laws of the place where the fugitive or person so charged shall be found—and this is the place where he was charged and found, and this is the place that shall govern the manner of the trial, and not what shall or shall not be admissible under the laws of India. It is true that under the laws of this country, under those Revised Statutes 5271, inasmuch as the consul of this country has certified that under the laws of India that testimony is admissible, and inasmuch as your Honor has construed that that was the testimony upon which the warrant was issued, of course that is admissible here under that ruling; it would not be admissible if this was an original trial, admissible here, but I submit that is all the more reason why this accused and his witnesses should be heard, and then your Honor may conclude whether or not there is such a probable cause as would justify the turning over of this accused to an officer of the foreign government, to be taken back to India, where testimony of that character may be admitted against him. Take that report of the private detective in

London, hearsay of the worst kind. It may be that that is
139 admissible in India. Your Honor knows, and I know, that it is not admissible here, though under your Honor's ruling, if the certificate is attached, it is admissible in this case.

The Court: I say, it is a settled rule of this Court that, in extradition proceedings, no matters of defence are admissible; there are only two questions that can be inquired into, the question of identity and the question of whether the accused was present in the demanding state at the time the crime was supposed to have been committed. It has been ruled that way many times. So far as I know, I have not been the first one that has ruled that way.

Mr. Spearing: In my investigation, I didn't come across any.

The Court: The question of foreign extradition is somewhat—this is the first case I have been called upon to hear myself, because usually it goes before the Commissioner, but that is a habeas corpus proceeding—

Mr. Spearing: Your Honor will recall that in this Charlton case,

that was under a treaty with Italy, and that is the way the court construed it, and in construing this section of the Revised Statutes—

The Court: The treaty with England is the same.

Mr. Spearing: There is a little difference.

140 The Court: No material difference.

Mr. Spearing: The court says there is not and cannot be any uniform rules as to when an examining magistrate shall hear the witnesses produced by the accused person. The proceeding is not a trial; it is confined to a single question, whether the evidence presents a *prima facie* case sufficient to hold the party for trial.

The Court: That is usually regulated by local statutes. The local statute here does regulate that and does admit the testimony.

Mr. Spearing: Your Honor knows, of course that in these extradition proceedings, after it leaves this court, it is different from what is ordinarily the course, because the only way you can get an appeal is by a *habeas corpus*; there is no appeal or writ of error in the technical sense.

The Court: Unless you have the right to apply to the Secretary of State.

Mr. Spearing: We have no right to appeal to the Secretary of State in the sense that we take an appeal from the judgement of a court.

The Court: Well, I don't know in that sense exactly, but I imagine that you would have the right to apply to the Secretary of State and there present such evidence as he cares to hear. The governor 141 of one state, the governor of Mississippi, sent a request for the extradition of a fugitive from the State of Mississippi, why the governor of the State of Louisiana would have authority to hear and determine whether or not to issue the warrant or not, upon the warrant of the magistrate of the demanding state. I don't know whether you have that right to appeal to the Secretary of the United States or not.

Mr. Spearing: I don't know. There is no provision which requires or permits that as a legal right. The only thing to be done would be to make certain representations to the Secretary of State.

The Court: Why don't you make those representations?

Mr. Spearing: The representations of the judge who heard the case are entirely and essentially different. There is no testimony heard in the sense of a trial, before the governor of the State; all that he requires is that there has been a warrant of arrest, that there has been an affidavit and a warrant of arrest, and if the accused is in the State. Now it has happened again and again that the governor of a state has said "No, I will not deliver up this fugitive." Your Honor will recall the well known case; I think it was a man by the name of Taylor, connected with the accused governor at the time of

Kentucky, when Goebel was killed. He fled over to the other 142 side *side* of the line, and the governor of Indiana says, "No, I will not give up Mr. Taylor; you can't take him into Kentucky for a trial." That was long after the close of the trial of the case. The laws of the various states are practically the same, and a man tried in Louisiana—I am talking now about a man against whom there is no local prejudice, as there was undoubtedly against Taylor in that instance—he is just as apt to get a fair trial in one

state as he is in another, I know of one case when Governor Hall——

The Court: Isn't Colonel Collins just as apt to get as fair a trial in India?

Mr. Spearing: In my judgment, no sir. The very fact that they admit in evidence a letter from the complainant's counsel or solicitor to him, a letter from a friend of his telling his conclusions from investigation that he has made, and a report from a so-called private detective, the fact that they admit all of that in evidence, to my mind, I think, is conclusive evidence that he could not get a fair trial, because if that evidence is admissible there, he cannot get a fair trial there, and he cannot get a fair trial any where where they admit that.

The Court: What about taking testimony in foreign countries by commission?

Mr. Spearing: Oh, they may take testimony, if the court 143 please, but these are ex parte statements.

The Court: I don't know if they are admissible in the trial on the merits there; they are admissible before the committing magistrate for the purpose of starting the proceedings, just as evidence on information and belief would be admissible before me for the purpose of starting these extradition proceedings. This was brought out in the Charlton case. Charlton made a strong effort to resist extradition. When he went back he was acquitted of the crime of murder; he was found guilty of manslaughter and sentenced to one year.

Mr. Spearing: But in the Charlton case there was no attempt to introduce testimony that he was not *prima facie* guilty. The testimony there was as to something subsequent to the commission of the offence.

The Court: It was a matter of defence.

Mr. Spearing: But that did not enter into the *prima facie* case. There is no situation where a man, if he is inclined to do so, cannot make out a *prima facie* case. Your Honor knows that, of course, in your practice and in your judicial proceedings, just as does any other lawyer. Now these men make out a *prima facie* case, to a very great extent, if not entirely, by, not testimony, but the statement of these

witnesses, so called, in London, who have made these investigations, and the question comes up, how these witnesses are 144 here and how they are going to get over to India, and I urge

your Honor that this Charlton case merely follows the general rule, that it is the character of the law that is to control in the place where the accused is found.

The Court: Let's see what these people say here.

(Documents handed to Judge, who peruses same.)

Mr. Spearing: That letter from Morser and that report of the private detective are in the Ganeshi matter. I don't think they are in the Pohoomull matter. There are the letters.

(Counsel hands documents to the Judge.)

The Court: That is what I ruled out, is it not?

Mr. Spearing: No; it was this that you ruled out.

Mr. Spearing: This is a letter from Harry Morser to Ganeshi Lall, and here is the report of the so called private detective to whom he referred the case in London.

The Court: How much is the rupee to the pound?

Mr. Spearing: I don't know sir.

Judge Marr: Fifteen. Your Honor will observe there is nothing in any of the evidence that would indicate a value, that is, that the

Court would know anything about—I am not talking about 145 the individual who occupies the bench, but I don't know if the Court will take judicial notice of the pound.

The Court: Sure; I will take notice of what a rupee is, that is, its approximate value. I couldn't take notice of the actual rate of exchange.

The Court: All right, Mr. Spearing. I have read the evidence now.

Mr. Spearing: I assume your Honor has not changed your mind with reference to the admission of this testimony that I offer?

The Court: No.

Mr. Spearing: Then I submit, if the Court please, that the record as made up doesn't show any offence, criminal in its nature, and that this is an attempt on behalf of those jewelers;

The Court: There are three different people. He went to one man and bought certain lots of jewelry and gave them a check for five hundred pounds, which was paid, gave a draft for two thousand pounds on Curtice & Co., or whatever it was, and gave them a promissory note. Now that Curtice note or draft was not paid and came back with the notation "Not authorized to draw." Before he gave that, the evidence shows that he went to the International Bank, and they suggested that he send a telegram to have his agents in London 146 pay the International Bank sufficient funds to cover this other draft—what was it, five thousand pounds?

Mr. Spearing: Five thousand pounds was the Pohoomull matter.

The Court: He came back and he told the men that he had sent the amount, that it was all right and that the money would be paid, and they accepted the draft, and then the money was not paid. That draft was dishonored, "No authority to draw." Now, take those two transactions just by themselves, that makes a clear case *prima facie* of obtaining goods by false pretences.

Mr. Spearing: In the Ganeshi matter the amount involved was four thousand five hundred pounds, of which he paid five hundred pounds in cash.

The Court: Paid five hundred pounds.

Mr. Spearing: Paid five hundred pounds; he gave his note for two thousand pounds and gave a draft on Curtice & Co. for two thousand pounds in the Pohoomull matter—

The Court: Well, I attach no particular importance to the note. A man might give his note and for various reasons might not be able to meet it; that is a mere promise to pay.

Mr. Spearing: Well, isn't a time draft the same thing?

The Court: I don't think so.

Mr. Spearing: There was a time draft there also.

147 The Court: A draft is exactly like a check on a bank. A man has no business to draw drafts unless he is authorized to draw them.

Mr. Spearing: The difference between a draft, may it please the Court, and a check on a bank is that the check on the bank is a promise to pay at sight, is an order to pay at sight; a check is entirely separate and distinct from a draft in that it is an immediate order and presumes that the amount is there at that time. A time draft—and in each instance these were time drafts—does not carry with it a suggestion that there are any funds in hand at that time, but it is merely like—

The Court: Carries with it the suggestion that he is authorized to draw; whether it is a time draft or a sight draft, it doesn't make the slightest difference. If this case was tried before a jury, and there was no evidence that he told this man from whom he bought the jewelry that this draft would be paid, and the draft came back with the notation "Not authorized to draw," and nothing else but that, the jury would be warranted in finding him guilty.

Mr. Spearing: I submit that would not be so on a time draft, because a time draft is nothing more than a promise that when it matures it will be paid, just as a term note is, and I submit—

148 The Court: Will be paid by the person on whom it is drawn.

Mr. Spearing: It will be paid and there will be money there to pay it.

The Court: That he was authorized to draw it and it will be paid, and it also imports that the party on whom it is drawn will accept it for payment when it is presented.

Mr. Spearing: There is nothing patent here, even on that ex parte statement, showing that it was ever offered for acceptance, any pretence that it was ever offered for acceptance, or that anybody ever indicated that it was to be presented for acceptance?

The Court: It was presented for payment and returned with the notation he was not authorized to draw.

Mr. Spearing: And then it was presented again. In one of those, and I think in both of those, the telegram of the accused to both of these parties that he hadn't completed his financial arrangements and not to present the draft for another sixty days—that is all in there. In the Pohoomull matter the amount was larger, and he first gave a draft on Curtice for five thousand pounds, but that draft was subsequently surrendered so they testify—they apparently had it still in their possession—at all events, it was cancelled.

The Court: They gave a fifteen thousand — check to pay back to him when the draft was paid, and it was in that transaction 149 that he made the statement about having telegraphed, that the money would be paid to the agents of the International Bank in London.

Mr. Spearing: I think your Honor will find—

The Court: Of course the point applies in the other one.

Mr. Spearing: I think not. In that transaction, it was the first

draft for five thousand pounds that was taken to the International Bank, and then they suggested that cablegrams be sent to ascertain if that would be paid, and it was after that that that draft was cancelled, the one thousand pounds was paid and another draft on Collins & Co. for four thousand pounds was given. That was that transaction. Now it seems to me that this also—I must necessarily be confined in the argument before your Honor to what is shown in those affidavits—those affidavits also show that these parties had other transactions, and I submit the conclusion is very clear: It is merely a bargain and sale on credit.

The Court: All these transactions were just at that time?

Mr. Spearing: And the other transactions at that time preceding that.

The Court: All within the space of a few days.

Mr. Spearing: Comparatively few days; a week or two; may be two weeks, and those transactions were all paid, the goods were 150 paid for, and there is no question about that, and here these goods subsequently were purchased, and when you come to Pohoomull, that testimony indicates that it was nothing more nor less than a commercial transaction, a bargain and sale upon terms of credit.

The Court: Induced by false pretences.

Mr. Spearing: Of course if your Honor concludes it was false pretences, but I am trying my best—

The Court: It is quite patent on the face of the papers. Here is a man buys some ten thousand pounds' worth of jewelry, nine thousand pounds' worth of jewelry or something like that, and drew drafts on people that returned them with the notation that he was not authorized to draw, why it is fraudulent on the face of it. There is no reason why anybody should buy jewelry unless you have got the money to pay for it; buying flour or something else, why it would be different, but with pearl necklaces and things of that sort—

Mr. Spearing: I submit that the character of the goods purchased does not affect the criminality of the act in the least.

The Court: Not in the slightest, but it has some effect on the testimony.

151 Mr. Spearing: If a person goes down to one of the jewelry stores here and buys a large amount of jewelry on the representation that he is wealthy and will pay for it at a future date?

The Court: That is a different thing. If he goes down and represents himself as a wealthy man and will pay at a future date, that may or may not be a case of fraud, but when he goes and says "I will pay you now, not in the future, but I will give you a draft right now; I have telegraphed these people and they have deposited money in the International Bank and the money will be paid," that is just like giving a check on a bank. It is not a credit transaction at all, that is a cash transaction, and when he is not authorized to draw those checks, why it is clear fraud; there is no other way to state it. It makes no difference whether Lieutenant Colonel Collins was or was not—I put all that to one side. Here is evidence tending to show he was an undischarged bankrupt and those sort of things, but juston that

transaction itself, buying these articles of jewelry and giving drafts, which drafts were returned with the notation "Not authorized to draw," I say that makes a *prima facie* case of fraud, obtaining goods by fraudulent pretences.

Mr. Spearing: Of course if your Honor has reached that conclusion, there is nothing that I can say that can change your conclusion.

152 The Court: Not a thing; there is nothing you can say to change my conclusion on that state of facts.

Mr. Spearing: That is the only state of facts before you, because your Honor will not permit any other than those facts to go in. In my statement I said he didn't represent that he had the right to draw the drafts.

The Court: That is a question for the jury over there.

Mr. Spearing: That evidence is not in. There is not any doubt apparently about the amounts he paid, and decidedly there is no doubt that this man told those people "I am in this oil deal and I expect to have the money then; I have not got it now; I expect to have the money then and have funds to pay this amount." There is not a particle of doubt about that, and there is no more criminality about that than if I were to go into a bank and buy ten thousand dollars' worth of jewelry, and say "I am in a deal by which I expect to make fifteen or twenty thousand dollars" —

The Court: That is all a matter of defence that will have to be made to the court in India.

Mr. Spearing: Unfortunately it does not go to England.

The Court: I said India.

Mr. Spearing: It goes to India, where, with all due deference —

153 The Court: They have trial by jury there.

Mr. Spearing: I assume so, probably native Indians.

The Court: By a jury of white men.

Mr. Spearing: Frankly, I don't know whether it is by a jury of white men; I think not; I don't know whether it is or not.

Judge Marr: The Inspector of Police told me all Europeans were tried by white men.

The Court: I know that.

Mr. Spearing: One of the judges that signed these orders is an Indian, a native Indian.

The Court: Well, they don't try Englishmen with native juries.

Mr. Spearing: Well, I don't know about that.

The Court: I know they don't. He has just the same opportunity of making his defence there; that is where he is charged and that is where he ought to make it.

Mr. Spearing: The case I have here is one where the Court there, the Supreme Court, 187 U. S., held that extradition proceedings should not be used as a means of collecting debts.

The Court: No doubt about that; I don't think so either.

Mr. Spearing: I submit there is nothing in any of these papers except that these men want to collect a debt which is due by —

The Court: I have no doubt if they had been paid they wouldn't have made the charge.

154 Mr. Spearing: I have no doubt if they were paid now, they would withdraw the charge.

The Court: Then why not pay them—

Mr. Spearing: For a very good and sufficient reason—

The Court: —give them back the property or something.

Mr. Spearing: For the very good and sufficient reason, because they have not the cash with which to do it. With all frankness; they have been arranging to get it.

The Court: Haven't they got the property that they bought?

Mr. Spearing: They have not got it so it can be delivered, no sir.

The Court: It is unfortunate. There is nothing for me to do but to hold Colonel Collins for extradition. I will make such order and I will facilitate you in any way in making up your record you want to. Of course you can still apply for a habeas corpus, if you get busy right now. There are two circuit judges here now, with jurisdiction in a case of that kind, and if they turn you down, you can go to the Supreme Court of the United States, but they will be leaving here on Saturday, and they won't be back until some time in the latter part of November.

155 *Affidavit of Complainant, Exhibits, Certificates, and Depositions of Witnesses.*

UNITED STATES OF AMERICA,

State of Louisiana, Parish of Orleans,

City of New Orleans:

Before me, the undersigned authority, personally came and appeared Tom F. Carlisle, who being by me first duly sworn, deposed and said that he is British Consul General at the City of New Orleans; that he is informed and being so informed verily believes that Charles Glen Collins having committed the crime of obtaining property by false pretences, stands charged in the Chief Presidency Magistrate's Court, at Bombay, India, with having, on or about February 26th, 1917, fraudulently, falsely and feloniously pretended to Mahomed Ali Zainal Ali Raza, at Bombay, India, that he, the said Collins, was a wealthy man, a partner in the firm of William Collins Sons & Company, of Glasgow & London; that he was a colonel in the Howe Battalion of the Royal Naval Division; and was then on six months' leave; that he, the said Collins, then and there had a right to draw a draft for seventeen hundred pounds on Messrs. E. Curtice & Company, 8 Clarges Street, London, and consequently that said draft would be paid; that the said E. Curtice & Company were bankers; whereas, in truth and in fact, as he, the said Collins, then and there, well knew, he, the said Collins, was not then and there a wealthy man, but on the contrary was a bankrupt; that he was not and never had been a partner in the firm of William Collins Sons & Company; that he was not a Colonel in the Howe Battalion of the Royal Naval Division and was not then and there on six months' leave; that he, the said Collins, had no right to draw a draft for two thousand pounds or

156 for any amount on said Messrs. E. Curtice & Company, and said Collins then and there well knew said draft would not be paid; that the said E. Curtice & Company were not bankers;

That by means of said false, fraudulent and felonious pretenses, said Collins then and there obtained from said Mahomed Ali Zaimal Ali Raza one pearl button of the price and value of seventeen hundred pounds, of the property and goods of the said Mahomed Ali Zaimal Ali Raza, which said pretences were to the knowledge of said Collins at the time of making same, false and fraudulent; and affiant further says that the said Collins is presently within the City of New Orleans, and within the jurisdiction of this Honorable Court, and that this affidavit is made in behalf of the British Government, for the purpose of having returned to India for trial, the said Collins.

And affiant further states that the source of his information and belief, upon which information and belief this affidavit is based, is as follows:

The evidence taken on said charge in the Chief Presidency Magistrate's Court, at Bombay, India, duly certified according to the provisions of Section 5271 of the Revised Statutes of the United States; the evidence taken before Sir John Dickinson, Knight, Bow Street Police Court, London, and the evidence taken before Alexander Duff Thompson, at Glasgow, salaried Sheriff of the Sheriffdom of Lanarkshire, duly certified according to the provisions of Section 5271 of the Revised Statutes of the United States.

(Signed)

T. F. CARLISLE.

Sworn to and subscribed before me this 8 day of November, 1918.

(Signed)

RUFUS E. FOSTER, Judge.

157

Certificate.

Calcutta, India, April 8th, 1918.

I, James A. Smith, Consul-General for the United States in Calcutta, hereby certify that the annexed papers being (1) a warrant of arrest, and (2) copies of *prima facie* proceedings in the court of the Chief Presidency Magistrate, Bombay, proposed to be used upon an application for the extradition from the United States of Lieutenant-Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretenses alleged to have been committed in Bombay, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of British India, as required by the Act of Congress of August 3rd, 1882.

[SEAL.] (Signed) JAS. A. SMITH,

*Consul General of the United States of America
at Calcutta, India.*

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Certificate.

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Lieutenant

Colonel C. G. Collins, late of the British Army, charged with the crime of obtaining valuable property by false pretenses, committed in British India, I hereby certify that, to the best of my knowledge and belief, the signatures "A. H. S. Aston" on the warrant of arrest, and on the information and depositions on which was granted, are the signatures of Arthur Henry Southcote Aston, a Magistrate in British India, having authority to issue and receive the same, and I further certify that such documents so signed by a Magistrate having jurisdiction in the place where the same were issued and taken, and authenticated by a Secretary to Government and sealed with his official seal, would be received in evidence for similar purposes in the Tribunals of British India.

[SEAL.] (Signed) A. H. GRANT,
*Secretary to the Government of India,
 in the Foreign and Political Department.*

Simla, the 2nd April, 1918.

159

Case No. 1463/P. of 1917.

No. 1463/P. of 1917.

To Arthur Fuller, Inspector of the Bombay City Police Force, Bombay:

Whereas one Lt. Col. Charles Glen Collins stands charged with the offence of obtaining property by false pretences at Bombay under section 420 of the Indian Penal Code in respect of a pearl button valued at £1700 the property of Mahomed Ali Zaimal Ali Raza.

You are hereby directed to arrest the said Lt. Col. Charles Glen Collins and to produce him at the Chief Presidency Magistrate's Court at Bombay or before such Presidency Magistrate as may then be present.

Herein fail not.
 Dated this 1st day of December 1917.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
 E. J. M.

160 In the Court of the Chief Presidency Magistrate, Bombay.

In re MAHOMED ALI ZAIMAL ALI RAZA, Complainant,

vs.

LT. COL. CHARLES GLEN COLLINS, Accused.

Charge: Cheating, Sec. 420, I. P. C.

I the undersigned being Chief Presidency Magistrate of Bombay hereby certify that the typed matter contained in the foregoing 17

pages of p. cr is a true copy of the depositions of Mahomedali Zainal Ali Raza, Kaikhushru Dadabhoi Rustomji Dady, Brijmohaklal Lalla Ramkisondas and John Mathew Perreira sworn and taken before me on the 1st day of December 1917 and of the list of Exhibits and of Exhibits thereto marked A, B, C, D, E, F, and XI and of my certificate.

Given under my hand and the seal of the Court this First day of December 1917.

[SEAL.]

(Signed)

A. H. S. ASTON,

Chief Presidency Magistrate, Bombay.

E. J. M.

161

Case No. 1463 P of 1917.

EXHIBIT NO. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Mahomedali	Father's name Zainali Ali Raza
Religion Mahomedan	Caste Arab
Age about 38	Occupation Pearl and Grain Merchant
Residence Sitaram Gully	District Hornby Road

Examination-in-chief:

I know Mr. Dady. In January 1917 he came to me and gave me certain information. In consequence of it I accompanied him to Malabar Hill. I saw Lt. Col. Collins and Mrs. Olga Olsan. I took pearls with me. I showed accused a bunch of pearls. He selected some pearls. I had them made up. I think there was some conversation about giving credit at the first interview but I am not quite sure. After the necklace was made up I went to Col. Collins again. Mr. Dady was present. Mrs. Olga Olsan was present and Col. Collins and Mrs. Muntz. Col. Collins was speaking with me through Mr. Dady because I don't know English properly. I understood that Col. Collins was a big man and very wealthy and partner of Messrs. Collins and Sons. He also gave me a diary saying it was the diary of their office. This is like the diary he gave me marked X for identification. He said he had many shares worth thousands of pounds. He told me Mrs. Olsan was very wealthy. He produced a letter purporting to show that Mrs. Olsan had £14000 to her credit at a London Bank. He took Mr. Dady aside and spoke about payment. I thought Mr. Dady was a big man also and I believed the representations made to me and agreed to give the pearls on credit. Col. Collins chose a pearl button for himself from me. He saw the pearl button from the beginning and liked it. He said he would come back and purchase it after he had visited his

Rajah friends. On February 26th I went to see him again — Malabar Hill. He took the pearl from me that day. He asked me to give that for credit also. It was a pearl of 52 Chavas and 38 $\frac{3}{4}$ cents 8 carats 93 cents. I sold it for £1700. He gave me a cheque for the pearl. I promised not to present it for 70 days until the 5th May. I paid in the cheque to the International Banking Corporation for collection. The cheque has been sent to London. I received this letter from the International Banking Corporation Ex. A. The cheque was drawn on Messrs. C. Curtice and Company 8 Clarges Street London.

If I had known accused was an undischarged bankrupt I would not have accepted the cheque. I believed accused's representations that he was a partner in William Collins and Sons. If I had known C. Curtice and Company was a boarding house and not a Bank I would not have accepted the cheque. Nothing has been paid to me.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

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EXHIBIT NO. —

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Kaikhushroo

Father's name Dadabhoy Rustomji Dady

Religion Zoroastrian

Caste Parsi

Age about 35

Occupation Commission Agent

Residence Waterloo Mansions

District —

Examination-in-chief:

I know complainant. I know Col. Collins. A friend of mine Mr. Furdunji came to me and told me that a friend of his Col. Collins wanted to buy some pearls and wished me to call on him. He gave me a letter of introduction to Col. Collins. I went there about the end of January or beginning of February 1917. I went to the Bungalow at 8 Harkness Road Malabar Hill. I saw Col. Collins, Mrs. Olsan and Mrs. Muntz. Col. Collins introduced me to the ladies. Col. Collins talked about buying pearls for a pearl necklace. I said I know a party who had a very large stock of pearls. Col. Collins said he wished to buy pearls up to £6000. I called on complainant after that. Next day we both went to Col. Collins' bungalow. Mrs. Muntz was not present. Mrs. Olsan and Col. Collins were there. Mrs. Olsan selected a string of pearls out of a large mass of pearls shown to her. She wanted the complainant to make them up into a necklace. At this particular time after complainant had gone downstairs accused broached the subject of credit. I told him I

would ask the complainant and let him know. I mentioned the matter to complainant in the motor on the way back. Complainant asked me to make enquiries and let him know whether he 164 was a desirable person to whom to give credit. I consulted Mr. Furdunji. He gave me certain information. After that we went to Col. Collins with the necklace and some other pearls. Both ladies were present and Col. Collins *Col. Collins* showed us a necklace which Mrs. Muntz had on. Col. Collins liked a button which complainant had. It was subsequently sold to Col. Collins for £1700—. During the negotiations Col. Collins gave us 2 diaries one for complainant and one to myself. Shown X and another diary. These are they put in Ex. B. and Ex. C. Accused wrote in the diaries. He said William Collins and Sons was his firm, that he held a considerable number of shares, that he was a partner in the firm, that he was on 6 months' leave and would not take an active part in the business. This took place on the 26th February. Accused gave a demand draft to complainant asking him to present it 2 months later. So far as I know it has not been realised. The accused Col. Collins seemed a tall man, square jawed, with fair hair, I think his eyes were grey. I seldom saw him smile. He seemed to have a very serious face. He was clean shaven. He used to walk quite straight. He was dressed well but not showily. He appeared to me to dress rather quietly. He has a long face and a square jaw.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

165

EXHIBIT No. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is Brijmohanlal	Father's name Lala Ramkison-das
Religion Hindoo	Caste Khatri
Age about 25	Occupation Jeweller
Residence Calcutta	District —

Examination-in-chief:

I am a complainant in another case against Col. Collins. I had correspondence with friends in London regarding the accused. I had enquiries made. My friend Mr. Harry Morsar wrote me this letter Ex. E enclosing this report Ex. F. The letter bears Mr. Harry Morsar's signature. I know it.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

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EXHIBIT NO. —.

Deposition of Witness No. — for the —.

I do hereby on solemn affirmation state that—

My name is John Mathew	Father's name Parreira
Religion Christian	Caste
Age about 50	Occupation Assistant International
Residence Mazagaon	Corporation, Bombay.
	District —

Examination-in-chief:

On the 27th February 1917 I received a draft for £1700 on Messrs. G. Curtice and Company signed by C. G. Collins for collection. I produce a certified copy of the entry in the ledger marked XI. The draft is lying unpaid at our London House.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,

Chief Presidency Magistrate, Bombay.
E. J. M.167 *List of Exhibits in Case No. 1463/P. of 1917.*

- X. Diary of Complainant's Haji Abdulla Ali Raza.
- A. Letter from International Banking Corporation dated 10th May 1917 to complainant.
- B. Name of the Colonel in the diary.
- C. Name of Mrs. Olga Olsan.
- D. Name in 2nd Diary written by the Colonel.
- E. Letter.
- F. Report.

XI. Certified copy of the entry in the ledger.

(Sd.)

P. DAVID,

*Judicial Clerk,**Chief Presidency Magistrate's Court, Bombay.*

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,

Chief Presidency Magistrate, Bombay.
E. J. M.

168

Ex. A.

International Banking Corporation.

Bombay, 10th May, 1917.

Haji Abdulla Aliraza, Esquire, Bombay.

C. G. Collins Bill on G. Curtice & Co. £1700 Our No. B. C. 17/211.

DEAR SIR: We have received cable advice from our London Manager stating that the above is unpaid. The reason given for dis-honour is "no funds."

Please instruct us and hand us Rs. 73/12/- as under at your earliest convenience:

1/4% Commission on £1700.....	Rs. 63-12-0
Cost of London cable.....	Rs. 10- 0-0
<hr/>	
	Rs. 73-12-0

Any further charges in this connection will be received from you on receipt of advice from London.

Yours faithfully,
(Sd.) _____, Manager.

True copy.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

169

Ex. B.

Lieut. Colonel C. G. Collins,

Charles G. Collins,

C. M. G.,

e/o Messrs. Wm. Collins Sons and Co., Ltd.,

Glasgow, Scotland.

True copy.

[SEAL.] (Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

170

Ex. C.

Mrs. Olga Olsen,
 3 Bryanston Square,
 London, W.

True copy.

[SEAL.]

(Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
 E. J. M.

171

Ex. D.

Lieut. Col. C. G. Collins,
 Charles G. Collins,
 C. M. G.,
 c/o Messrs. Wm. Collins Sons and Co., Ltd.,
 Glasgow, Scotland.

True copy.

[SEAL.]

(Signed) A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
 E. J. M.

172

Ex. E.

Harry Morser.

37 Hatton Gardens,

London, 28th September, 1917.

Mr. Ganeshi Lali, Agra.

MY DEAR FRIENDS: I beg to acknowledge receipt of your esteemed letters and different cables and confirm my different cables which no doubt you have received. I had to postpone writing to you fully until such date when I should be in a position to give you full information regarding Collins. If you have not heard from me at once in answer to your cables, please do not think for one moment that I have neglected the matter but I simply did not care to telegraph unless I had definite news. I also had the visit to Messrs. Sanderson's Solicitors whom I have given every information and assistance that I could. I personally did my very best to find out all I could about this man, but when I saw that such channels as I should be compelled to use were close- to me I considered it in your own interest to employ a private detective who has far more facilities than I have. I found this man in Mr. Brewster Kemp who has been 35 years with Scotland Yard, I arranged with him the fee and his investigations are embodied in the enclosed report a copy of

which I have given to your solicitors. I am extremely sorry that you have been the victim of a swindler, and up to the time of writing it has been impossible to find out where Collins is. Mr. Kemp is now working hand in hand with your solicitors and you may rest assured that everything is being done airtl watched by me in your interest. My opinion is that when Parliament is sitting again to approach his brother who may settle the matter. At present 173 the whereabouts of his brother are unknown, but he is sure to come to London when Parliament opens. I am enclosing herewith a statement of my expenses, and I should be very glad if you will kindly remit same. I trust and pray that you may be spared this heavy loss and you can rest assured that everything is being done in your interest. I hope you are enjoying excellent health.

With kindest regards from my family to you and yours,
I am always,

Your sincere friend,
(Sd.)

HARRY MORSER.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.
E. J. M.

174

Ex. F.

Private and Confidential.

The Holborn Stadium.

35 High Holborn, W. C. 1,

13th September 1917.

Re Charles Glen Collins.

Henry Morser, Esquire, 37 Hatton Garden, E. C. 1.

DEAR SIR: I have to report that, acting upon your verbally conveyed instructions, having made inquiries respecting the above man, the information I have been able to obtain so far is as follows:

He is a member of the family of William Collins Sons and Company, Publishers and Stationers, who carry on business in Glasgow, London and Australia, but he is in no way connected with the business. He is one of four brothers, two of whom, Godfrey and William, are Directors of the firm in question.

He formerly obtained a commission in the Gordon Highlanders and served with distinction in the Boer War. He subsequently went to the United States, where he married a Miss Wheeler, daughter of Mr. Wheeler, a member of a famous sewing machine manufacturing firm.

At the outbreak of war with Germany, he joined the Naval Brigade and was appointed to the Command of the Howe Battalion,

and served during the Gallipoli campaign; he evidently returned to London and lived at various addresses.

The address: 51 South Street, Park Lane, is a large block of residential flats. He has never lived there; he occasionally 175 visited a Mr. and Mrs. Muntz. Mr. Muntz is believed to have served with Collins as a brother-officer in the Gallipoli Campaign. He divorced his wife and Collins was cited as the co-respondent.

Collins and Mrs. Muntz suddenly left the country together and went to Colombo, thence to Bombay; later to New York and they were recently heard of in Norway. It is believed that Mrs. Muntz has been working with him in India, contracting these debts.

Charles Glen Collins was adjudicated a bankrupt in this country on the 19th August 1904, with heavy liabilities. A second petition in bankruptcy was filed against him in 1916, but he did not surrender to his examination.

On the 16th March 1912 he was arrested for obtaining money by means of worthless cheques at the Victoria Hotel, Sligo, but the charge was subsequently withdrawn and it is supposed the matter was settled by his friends.

He is also believed to have obtained money by means of worthless cheques in Vienna.

One of his brothers is Major Godfrey Patterson Collins, former Secretary to Colonel Seely, and now private secretary to Mr. Gulland, M. P., who is a Liberal Whip to the present Government.

I am informed that Mrs. Collins is about to divorce her husband in New York.

Mrs. Muntz is the daughter of a Mr. Benn, a very rich iron founder and I am seeking an early interview with him and also with Major Godfrey Collins, with a view to obtaining, if possible, the present address of Charles Glen Collins and possibly a settlement of this account or some security for it.

I understand that the Official Receiver recently obtained possession of some shares left to Collins under his grandfather's will and these have been disposed of for the benefit of the Creditors.

I have interviewed Mr. Edward Curtice of 8 Clarges Street, Piccadilly, who has furnished flats at this address; he also has the Curzon Hotel, Broadstairs, and the Philbeach Private Hotel, Kensington. He informed me that he has known the Collins 176 family for many years, especially Charles Glen Collins. The 1st he heard of Collins was from Bombay, when he, Collins, informed him that he proposed purchasing certain Oil properties in South America; later he sent word by a friend (unknown to Curtice) that he was forwarding to Curtice a sum of £11000 to cover certain liabilities contracted. This money, however, has not yet arrived, but Curtice states that he is expecting to hear from Collins in the near future, and has promised to acquaint me at once should he hear.

Mr. Curtice states that he was not aware that the Bill had been drawn on him until someone called to collect it.

I am pursuing the inquiry with a view to learning the present

whereabouts of Collins and I hope to be able to obtain this information very shortly when a further report will be submitted.

I am, dear sir,

Yours obediently,

(Sd.)

WILLIAM H. KEMP.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

177

XI.

Memorandum.

From the International Banking Corporation.

Bombay, 1st December, 1917.

To the Police Court, Esplanade, Bombay:

We hereby certify that we received for collection on 27th February 1917, from Mohomedally Zainal Aliraza, a bill drawn by C. G. Collins on G. Curtice and Co. 8 Clarges Street, London W, for £1700 (Pounds one thousand seven hundred).

The bill is at present held by our London office unpaid.

INTERNATIONAL BANKING CORPORATION,

(Sd.) — — —, Manager.

True copy.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

E. J. M.

178

Chief Presidency Magistrate's Court.

Bombay, 1st December, 1917.

I, A. H. S. Aston, Esquire, Chief Presidency Magistrate of Bombay, do hereby certify that a prima facie case of an offense of obtaining property by false pretences at Bombay under section 420 of the Indian Penal Code in respect of a pearl button valued at £1700 has been established against the accused Lieut. Col. Charles Glen Collins and that the alleged act constitutes under the law in force in the Bombay Presidency an offence punishable under the Indian Penal Code with imprisonment of either description (rigorous or simple) for seven years and a fine.

Given under my hand and the seal of the Court this 1st day of December, 1917.

[SEAL.]

(Signed)

A. H. S. ASTON,
Chief Presidency Magistrate, Bombay.

E. J. M.

179 United States District Court, Eastern District of Louisiana.

No. 15936.

In the Matter of Extradition Proceedings of CHARLES GLEN COLLINS.

Proceedings Had in the Above Entitled and Numbered Matter on the 21st Day of November, 1918, Before the Honorable Rufus E. Foster, Judge United States District Court, Eastern District of Louisiana.

Appearances.

Judge R. H. Marr, representing petitioner.

J. Zack Spearing, Esq., representing defendant.

Judge Marr: I offer all the documents connected with the affidavit of T. F. Carlisle, all certified copies of the proceedings held in the Court of the Chief Presidency Magistrate, Bombay, with all the certificates thereto attached. I offer in evidence also the testimony taken before Sir John Dickinson, Knight, in London, and the evidence in Glasgow before Alexander Stuart Duff Thomson.

Judge Marr: Then of course I presume the admission that Mr. Collins is the person described in the affidavit.

Mr. Spearing: Yes.

Objection.

Mr. Spearing: I object to the reception of any of the documents, papers, certificates, or copies that have been offered in evidence, on the ground that they do not relate to, and do not show, a charge against the accused for an offence covered by any treaty between the Government of Great Britain and the United States, and they do not charge any offence which, under any treaty between those two governments, is extraditable, and the papers offered in evidence relate to an offence entirely separate, different and distinct from the offence charged in the affidavit filed in this Court.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

Mr. Spearing: Reserving the benefit of the objection made to the admission of any of the papers and documents in evidence, I make the following objection: First, that the certificates are not in proper form and that the certificate of A. H. S. Aston, Chief Presidency Magistrate, of Bombay, dated December 1st, 1917, refers to typed matter contained in the foregoing 17 pages of paper, whereas, in

truth and in fact, there are not 17 pages, and he does not refer to the papers which follow the certificate.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

Objection.

Mr. Spearing: I object to any of the other papers and documents, because the papers from India do not contain any warrant of arrest, and on the further ground that such papers as are further offered relate to the charge of cheating, whereas the affidavit filed in this court by the Honorable T. E. Carlisle, British Consul General at New Orleans, refers to the charge of obtaining valuable property or goods under false pretences; that the charge of cheating is not extraditable under the treaty between the Government of Great Britain and the Government of the United States.

The Court: I overrule the objection.

Mr. Spearing: I reserve a bill to the ruling of the Court.

Objection.

Mr. Spearing: I object to the affidavits taken in Glasgow and London, being the evidence of John Richard Campbell Howie, Edward Curtice and others, James Paterson, Hugh Allan and A. S. D. Thomson, on the ground that they were taken after the charges were made in Bombay, India, and form no part of the proceedings in Bombay, India, and that the papers were not part of the papers or documents upon which the charge against this accused was made, or on which the warrant of arrest, if any was issued, was based.

The Court: I sustain the objection.

Objection.

Mr. Spearing: I further object to the affidavit of A. H. S. Aston, dated December 1st, 1917, he being the Presidency Magistrate of Bombay, in which he states his conclusion, on the ground that it is no part of the proceedings and is not binding upon this Court.

The Court: I sustain the objection.

Mr. Spearing: I now offer Charles Glen Collins as a witness.

The Court: There is a little difference in these affidavits, in both of these affidavits there is some mention that Collins made some arrangement of credit. I will let him explain that, if he wants to.

183 CHARLES GLEN COLLINS, being duly sworn, testified as follows:

Direct examination.

By Mr. Spearing:

Q. Colonel Collins, we are now on the charges of Ali Raza, of Bombay, India. Mr. Ali Raza, in his examination in chief before

Mr. Aston, Chief Presidency Magistrate, in Bombay, states that he knew a Mr. Dady, and that he, Ali Raza, went out to see you at Malabar Hill.

A. That is correct.

Q. Do you remember the circumstances?

A. Yes sir; quite well.

Q. Among other things, he says he saw you and Mrs. Olga Olsan, and he took pearls with him.

A. We bought a pearl necklace and a single pearl from him, and paid him £3000 in cash and gave him notes for the balance.

Q. He refers to a conversation with reference to giving credit.

A. Yes sir.

Q. What was that conversation?

A. Well, I told him, as I told all those parties whom I saw, that I had been commanding the Howe Battalion and that I was on sick leave—

Q. I understand the Judge does not want you to testify to anything of that kind.

The Court: I don't object.

A. I mean it was on those points that he gave me credit.

Q. You say you told him you had been a colonel in the 184 Howe Battalion?

A. Yes sir, and that I was on sick leave, and that I was a brother of the chairman of a firm of publishers and stationers in Scotland and London.

Q. What was the name of that firm?

A. William Collins and Sons, Limited.

Q. Is that a firm or a corporation?

A. A corporation.

Q. What request, if any, did you make for credit?

A. The only credit I wanted was, I said I couldn't pay more than half in cash and half in notes; was that agreeable to him?

Q. Did that refer to the transaction of the pearl necklace as well as to the pearl that is referred to in these affidavits?

A. It took place simultaneously, took place at the same table, in the same room.

Q. Who purchased the pearl necklace?

A. You see, I was acting—

The Court: There is nothing about a pearl necklace in this case, is there; it is only a pearl button, is it not?

Mr. Spearing: No sir; but that I think is necessary in explaining the credit portion of it, because, as the witness has just stated, the two transactions were simultaneous and at the same table.

Q. Who purchased the pearl necklace?

A. I arranged all of these purchases for these ladies.

Q. Who was with you at that time?

185 A. All the same party; Mrs. Olsan, Mrs. Muntz and myself, and numerous other people.

Q. Who got the pearl necklace?

A. Mrs. Olsan.

Q. And you got the single pearl?

A. I didn't get it; Mrs. Olsan, she wore it, she had it mounted.

Q. You gave Ali Raza a check or draft on Curtice & Co.?

A. £1,700, and, to the best of my recollection, a check on the London, County and Westminster Bank for £3,150.

Q. Was that on account of the whole transaction?

A. Yes sir; I will say, a note of Mrs. Olsan on her—I can't say if that was or was not made on her father's firm of bankers in London, or on the same London, County & Westminster Bank.

Q. Was there a lump sum agreed upon for all of the jewelry purchased at that time?

A. Absolutely.

Q. What was said with reference to the time of the presentation of the draft or check or note?

A. I explained to them my oil deal. I showed them the film of the oil in Houston, and they agreed to wait until we got our money from the oil deal.

Q. Did you explain that situation to them?

A. I explained it at very great length, on very many occasions.

By the Court:

Q. That was with regard to the notes?

186 A. That was about the note; I couldn't pay them the whole sum in cash.

Q. There was no agreement about the checks you gave?

A. The time I gave those—

Q. You drew a check on a certain designated firm. At that time did you have any money on deposit with that firm?

A. No sir.

Q. Did they agree at that time to pay your checks?

A. They always did so in the past.

Q. Did they make any agreement with regard to these checks?

A. No sir; I explained I didn't have the money at that time.

By Mr. Spearing:

Q. This explanation you made to them, did that refer only to the note that was given, or did it refer to both the notes and the draft on Curtice & Co.?

A. It had reference to everything.

Q. What was the understanding or agreement between you and this party with reference to the time of the presentation of the draft on Curtice?

A. Well, it is called a check, of course, it is a draft like the others. I told them I received my money by a certain date in April, April 10, and I arranged all these drafts would come at that time in London, about a fortnight after, and I arranged for the money by cable in Shanghai to meet these drafts when they became due.

Q. Did you get the jewelry or the pearls before or after that understanding was made?

187 A. Afterwards.

Cross-examination.

By Judge Marr:

Q. What business is E. Curtis engaged in in Clargis Street, London?

A. Mr. Curtice is the owner of a number of hotels and boarding houses. He is a financial man in this degree. He was associated with me many times in the past in business deals.

Q. He is not in the banking business at all?

A. He never has been.

Q. You didn't notify Curtice in London that you had any intention to draw on his for that amount?

A. I wrote him at once from India; sent him some money.

Q. And before you got any answer from him authorizing you to draw any drafts—

A. I often drew drafts on him for the last twelve years.

Q. You had no authorization from him to draw this special draft of £1,700? had you?

A. There was no need for a special authorization for drawing drafts; I always had done so.

Q. At the time you drew this draft, I understand you had no funds whatever in his hands for collection?

A. When you say that, there is information in the District Attorney's office, among the papers seized, showing how much money he had of mine, acknowledging receipt or dispatch of the money to Curtice.

Q. The evidence which purports to have been taken in London of Edward Curtice says: "I have had no communication whatever with Collins in regard to the drafts for £5,000 or £1,700."

Objection.

Mr. Spearing: I think it is necessary for me to make formal objection to this testimony on the ground of irrelevancy.

The Court: I sustain the objection.

Q. But you do admit that you had no formal authorization from Curtice & Co. for drawing a draft on them?

A. I never have had.

Q. You also admit that you had no money in their hands at the time this draft was drawn?

A. If you send up to the District Attorney's office, you will find among the papers—

By the Court:

Q. Just answer the question.

A. I don't know until I see the dates. In my opinion, I had.

Q. You never paid these drafts?

A. No sir; I have not had much of a chance.

Q. You never remitted anything to Curtice & Co. to take up these special drafts?

A. No sir; I have not had enough money to do that.

Q. Did you tell these people that you were a member of the corporation of William Collins & Sons?

A. No sir.

By Judge Marr:

Q. Your statement is that these people extended credit to 189 you other than that of those drafts. What did you say to them that would lead them to believe you were capable of paying that amount of money?

A. Because I paid them £3,000 in cash, \$15,000 in cash.

Q. Didn't you draw a draft for £5,000 about that same time on Curtice & Co.?

A. Yes sir; that pearl necklace cost £4,000.

Q. And that also was paid?

A. Yes sir.

Q. So that you drew drafts aggregating £6,700 on a firm that you had absolutely no money with, and from whom you had no written authority to draw drafts on?

A. Well, I always drew drafts on them, they had been met, in the past.

Q. But you had no authority from them to draw any drafts upon them; they didn't tell you "You may draw on us up to the extent of £6,700 from India and we will pay those drafts"?

A. Not until he received my money.

Q. Didn't you tell these people that you were a member of the firm of Collins & Co.?

A. Never.

Q. You never told them anything of that sort?

A. Of that sort? I told them what I have told you.

Q. Didn't you tell them you had a large amount of railroad shares and that you were a large holder of shares of stock, and that you were amply able to meet any indebtedness you might owe?

A. I have had a lot of railroad shares.

190 Q. Did you have them at that time?

A. Mortgaged.

Q. Is it not a fact that that very time when you were giving these drafts in India, that proceedings were taken against you in Great Britain as a bankrupt?

A. I don't know it and have never heard of it since. It was after I left England that you make that statement.

Q. You are, at this present moment, are you not, at this present moment, an undischarged bankrupt, by proceedings instituted against you in 1902?

A. To the best of my knowledge, no.

Q. You don't mean to testify you are a discharged bankrupt, do you?

A. I have never been put in bankruptcy in my life.

Q. You never were, prior to this suit?

A. I never have been in bankruptcy, except in the United States. There was a petition against me in 1902.

Q. How many times have you been proceeded against with regard to a discharge in bankruptcy?

A. To the best of my knowledge, only once, in 1902.

Q. You had no previous acquaintance with these people before you had these jewelry transactions, this man Ali Raza?

A. Never.

Q. You never knew him before at all?

A. No sir.

Q. And you did get, on the presentation of this draft for 191 £1,700, this pearl button—

A. And the £3,000 in cash.

Q. You didn't pay them £3,000 in cash for the pearl button?

A. No; but it was given for the two transactions.

Q. You did buy from these people a pearl button of the value of £1,700?

A. Yes sir.

Q. And you gave in payment for that pearl button a draft drawn on these people in London for £1,700. Was not the amount of the draft equal to the purchase price of the button?

A. It was.

By the Court:

Q. I understood you to say that you told him you were an officer in the English army on sick leave?

A. Yes sir.

Q. Was that true?

A. Yes sir.

Q. Are you an officer in the English army now?

A. No sir.

Q. When was your connection with it closed?

A. January 1916, from the Admiralty, when I was discharged from the Royal Marines.

Q. What was your commission?

A. Lieutenant Colonel of the Royal Marines.

Q. When were you discharged?

A. I never was discharged; I resigned my appointment in the Royal Marines and went on to my regiment in London, in January 1916, on account of ill health.

192 Q. Was it before or after you went to India?

A. Before.

Q. So, at the time you made these purchases, you had already resigned?

A. Yes sir; but I was being employed. You see, I was used by the Department as a — and when the regiment was transferred, my health broke down, I had to resign my appointment so as to get back to my real profession in the War Office, in the army, where I had been employed before at the beginning of the war.

By Judge Marr:

Q. I show you what purports to be a passport issued at the office in London on the 8th day of January 1916.

A. Quite correct.

Q. I notice that in that passport you give your age as 36 and profession as that of banker?

A. Yes sir.

Q. You didn't give your profession as being in the army, did you?

A. I was not allowed by the Admiralty. Any officer of the army or navy crossing the North seas had to go disguised because in case of submarines capturing these neutral vessels.

Q. Where did you conduct your banking business?

A. In New York chiefly.

By the Court:

Q. You resigned your commission?

A. My appointment; you can't resign your commission in wartime.

193 Q. You had resigned your appointment?

A. Under the admiralty.

Q. What was your official standing in the British Admiralty or army?

A. Commander of the Howe Battalion.

Q. Not after you had resigned your appointment?

A. No sir.

Q. What was your understanding after you had resigned your appointment?

A. I was simply sent back to my lower rank, as captain in the army, where I had been when I came to the War Office.

Q. Do you still hold your position as captain in the army?

A. No sir, I have no commission, because, at the end of six months, you are automatically dropped. I lost the appointment as colonel of the army in Canada last year. There I held the rank of colonel, general staff officer at Alcarte.

By Judge Marr:

Q. When you came to New Orleans in November 1917, you were then out of the Army?

A. Yes sir; I had a sick leave certificate from Quebec.

Q. I say, when you came to New Orleans in November 1917, had you not ceased being an officer in the British Army?

A. No sir; the letters will disprove that, the letters Mr. Spearing has from the general officer commanding in Canada, from the Adjutant General of the Canadian forces, dated October 17, that will disprove that.

194 Q. In October 1917?

A. Yes sir; that is three weeks before I came here.

Q. Three weeks before you came here, you were no longer in the army?

A. No; I went before the medical board in Quebec, I think it was the 1st of October, that is the date of the certificate, and they wouldn't let me go back in active service for six months.

Q. You came to New Orleans in November 1917?

A. Yes sir.

Q. Hadn't your connection with the British Army ceased when you came to New Orleans?

A. No; the doctors would pass me as *git* now.

Q. I want an answer, yes or no; isn't it a fact when you came to New Orleans in 1917, your connection with the British army had come to an end?

A. No sir.

Q. What was your rank in the British Army at that time?

A. Lieutenant Colonel.

Q. So, when you presented yourself at the British Consulate here in November 1917, you were still a colonel in the British Army?

A. Yes sir; on sick leave.

Q. On six months' sick leave?

A. Yes sir; from the medical board at Quebec.

By Mr. Spearing:

Q. Will you please explain in detail how it was that when you got that passport about which you were asked, you did not give your rank either in the army or in the navy?

195 A. I applied for permission from the admiralty to go to New York to recover my health, after I was discharged as semi-fit by the medical officers of the Royal Navy Hospital at Plymouth. They sent for me and told me I could leave for three months, but I must not, in crossing the North Sea, take any papers of any kind at all with me, in case of capture by German submarines. That rule applied to all naval officers crossing the North Sea at that time. For that reason, they gave me this passport, and they made it out to me as a banker, because I told them that was my profession before the war.

Q. You did go to New York?

A. Yes sir; and then I was used immediately afterwards in carrying dispatches for the British Embassy from Petrograd to Vladivostok. That was what took me out to the Far East.

Q. That was after you got your passport?

A. Yes sir.

Q. Did you actually carry those dispatches?

A. Yes sir.

Q. You have a receipt from the British Embassy at Tokio for them?

A. Yes sir.

Q. That was one of the motives you had in going to the Far East?

A. Yes sir.

196 Q. Will you explain just your connection, either by blood or in a business way, with the corporation of William Collins & Sons, Limited. First, is that a family business?

A. That is a family business. My great-grandfather founded it and my brother is the present chairman.

Q. Did your father have any connection with it?

A. He was a director and shareholder.

Q. Did he ever have any stock in it?

A. Yes sir, and he left it in trust for his children, the same as my grandfather, Sir William Collins, he left it to my brothers and my sister and myself, a great many shares, all in trust.

Q. What has become of your interest in that concern?

A. The banks in Glasgow have loaned *sum* large sums against my shares. The firm has been obliged to reduce the dividends during the war, and at the present time I am receiving no income from my shares held by the trustees.

Q. Did you ever receive any dividends from William Collins and Sons?

A. Of course.

Q. Up to what time?

A. The trustees have been paying me moneys continuously from 1904 to 1914, when I went back to the War Office and rejoined in August.

Q. So far as your military record is concerned, I understand that before the present war broke out, you were connected with the army?

A. An officer for eight years in the Cameron Highlanders. I resigned my place in 1904, with the rank of captain.

197 Q. When the present war broke out, what part of the service did you go into?

A. I reported in the War Office, and was employed in the War Office for about thirty days with the rank of captain. I was then transferred to the Admiralty with the rank of commander, as second in command of one of the regiments of the Royal Naval Division, and later I was promoted, I was transferred from the Royal Navy to the Howe Battalion, with the rank of Lieutenant Colonel.

Q. And you served in that capacity?

A. Until June 1916, or over a year and a half, I was in the Howe Battalion.

Q. And you have not been in actual service since June 1916?

A. Not in the field, but in Canada; I was carrying these dispatches.

Q. When you came to this country, you went to Canada?

A. I reported myself to the military attaches, and shortly after I was instructed to go to Quebec and to report for duty there as instructor, as military instructor.

Q. As a matter of fact, did you report for duty?

A. Yes sir.

Q. In what capacity and at what place?

A. Lieutenant Colonel.

Q. And at what place?

A. At Alerate Camp, Alerate, Quebec.

Q. How long did you serve there?

A. Three months.

198 Mr. Spearing: Your Honor, I would like to offer the testimony of Mr. William H. Smith, as I did in the other case.

The Court: I will hold that the testimony of Mr. Smith, which I understand can only corroborate the Colonel as to his oil transactions in the United States, from which he expected to derive funds to pay for these jewels that he purchased, is irrelevant and inadmissible, just the same as the Colonel's testimony on that line, I have permitted the defendant to testify in order that he might explain, if he so desired, the ambiguous statement in the affidavits on which the requisition issued, that there had been a discussion about credit when the jewels were bought.

Mr. Spearing: I now offer Colonel Collins as a witness to prove the facts which it was stated could be proved by him in the former proceedings consolidated in 15,927, and also offer Mr. William H. Smith as a witness to substantiate Colonel Collins, as stated in that statement of facts.

Offer.

Mr. Spearing: I also offer all of the documents and papers which were offered in the said proceedings 15,927, concerning the other affidavits against this same accused.

The Court: I exclude the testimony.

Mr. Spearing: To all of which I except and make this note in lieu of a formal bill of exceptions.

199 Mr. Spearing: I offer the transcript of the record in the proceedings 15,927, to form part of this purpose for such purpose as it may serve.

The Court: I will consolidate this case with the other two.

The Court: It is quite evident that the defendant purchased the pearl stud, or was instrumental in its purchase, for £1700, and that he gave in payment of it, a check or draft on a firm in London with whom he had no funds deposited, and against whom he was not specially authorized to draw the check. This makes out a *prima facie* case of obtaining goods by false pretences, whether he subsequently intended to pay for the goods in some other way or not, and the matter is one that should come before the Indian courts for trial on the merits. Therefore I will hold him for requisition from the Secretary of State.

200 *Motion of Charles Glen Collins to Dismiss.*

Filed Nov. 21, 1918.

U. S. District Court, Eastern District of Louisiana, New Orleans Division,

No. 15936.

In re Extradition Proceedings of CHARLES GLEN COLLINS.

Now comes Charles G. Collins whose extradition is sought in these proceedings and moves the Court to dismiss the affidavit herein and to discharge him from custody without day because this Court is without jurisdiction to try Appearer or to hear and pass upon the questions raised by the affidavits or the rights of this Appearer on the grounds and for the reasons following, to wit:

Because the affidavit of Thomas F. Carlisle, British Consul General is not such as is required by law, does not comply with the law and did not justify the issuance of the warrant of arrest and does not justify the holding of the Appearer thereunder for the reason that

The said affidavit does not charge this Appearer with having committed any crime and particularly does not charge him with having committed a crime for which, under the treaties between this Country and Great Britain, this Appearer may be extradited.

Wherefore, this Appearer objects to and protests against this Honorable Court hearing any evidence, either oral or documentary, upon the affidavit hereinabove referred to and prays the Court to dismiss the said affidavit and to discharge this Appearer without day.

(Signed)

CHARLES G. COLLINS.

(Signed) J. ZACH SPEARING, *Atty.**Affidavit.*STATE OF LOUISIANA,
Parish of Orleans:

Before me the undersigned authority personally came and appeared Mr. Charles G. Collins who being duly sworn deposes and says: That all of the allegations in the above and foregoing petition are true and correct.

(Signed)

CHARLES G. COLLINS.

Sworn to and subscribed before me this 21st day of November 1918 at the City of New Orleans, State of Louisiana.

[SEAL.]

(Signed)

J. ZACH SPEARING,

Not. Pub.

Filed Oct. 30, 1918.

United States District Court, Eastern District of Louisiana.

Nos. 15927 & 15928 (Consolidated).

In the Matter of Extradition Proceedings versus CHARLES GLEN COLLINS.

These causes, as consolidated, came on this day to be further heard upon requisition of Gerard M. Loly, British Vice Consul at the City of New Orleans, and of Tom F. Carlisle, British Consul General at the City of New Orleans, that Charles Glen Collins be committed for the purpose of being delivered up as a fugitive from justice, pursuant to the provisions of the treaty made between the United States and Great Britain, August 9, 1842, and subsequent additional conventions—counsel for the respective parties being present, and the defendant, Charles Glen Collins, being present and represented by counsel;

Whereupon, after hearing exhibits and evidence, and arguments of counsel, and on due consideration thereof, I find and adjudge that the evidence produced against the said Charles Glen Collins is sufficient in law to justify his commitment on the charge of having obtained property by false pretenses;

It is therefore ordered, adjudged and decreed that the said Charles Glen Collins be committed to the House of Detention for the Parish of Orleans, State of Louisiana, to be held for extradition to British India for trial on the charges pending against him in the Chief Presidency Magistrate's Court at Bombay, India, and to abide the order of the President of the United States in the Premises, until the further orders of the Court.

October 30th, 1918.

(Signed)

RUFUS E. FOSTER,
*Judge of the United States District Court
 for the Eastern District of Louisiana.*

Issued October 30, 1918.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

To the Marshal of the Eastern District of Louisiana, or Either of His Deputies, and the Keeper of Either of the Gaols in Said District, Greeting:

These are, in the name of the President of the United States of America, to command you, the said Marshal or Deputies, and each of

you, forthwith to convey and deliver into the custody of the Keeper of the House of Detention for the Parish of Orleans, State of Louisiana, the body of Charles Glen Collins, directed by order rendered this day in these proceedings, to be held for extradition to British India for trial on charges pending against him before the Chief Presidency Magistrate Court at Bombay, India, as set out in the complaining affidavits herein;

And you the said Keeper, in the name of the President of the United States of America, aforesaid, are hereby commanded to receive the said Charles Glen Collins into your custody — said House of Detention and him there safely to keep or be otherwise discharged in due course of law, until the further orders of the court.

Hereof fail not at your peril.

Witness, The Honorable Rufus E. Foster, Judge of the United States District Court, this 30th day of October in the year of our Lord one thousand nine hundred and eighteen.

[SEAL.] (Signed) RUFUS E. FOSTER,
*Judge of the United States District Court
 for the Eastern District of Louisiana.*

Marshal's Return on Commitment.

Filed November 19, 1918.

Received by U. S. Marshal, New Orleans, La., October 31st, 1918, and on the same day month and year, I delivered the body of the within named Chas. Glen Collins into the custody of the keeper of the house of Detention, New Orleans, La.

FRANK M. MILLER,
U. S. Marshal,
 (Signed) By SAM W. TAYLOR, *Deputy.*

[Endorsed:] U. S. District Court. Nos. 15,927 & 15,928 (Consolidated). In the Matter of — Charles Glen Collins. Commitment.

204

Order of Commitment.

Filed Nov. 21, 1918.

United States District Court, Eastern District of Louisiana.

No. 15936.

In the Matter of Extradition Proceedings versus CHARLES GLEN COLLINS.

This cause came on this day to be heard upon requisition of Tom F. Carlisle, British Consul General at the City of New Orleans, that Charles Glen Collins be committed for the purpose of being delivered

up as a fugitive from justice, pursuant to the provisions of the treaty made between the United States and Great Britain, August 9, 1842, and subsequent additional conventions;

Present: Robert H. Marr, Esq., attorney for Tom F. Carlisle, British Consul General at the City of New Orleans, Complainant;

" J. Zach Spearing, Esq., attorney for the defendant, Charles Glen Collins, and said defendant, Charles Glen Collins, in person;

Whereupon, after hearing exhibits and evidence, and arguments of counsel, and on due consideration thereof, I find and adjudge that the evidence produced against the said Charles Glen Collins is sufficient in law to justify his commitment on the charge of having obtained property by false pretenses;

It is therefore ordered, adjudged and decreed that the said Charles Glen Collins be committed to the House of Detention for the Parish of Orleans, State of Louisiana, to be held for extradition to British India for trial on the charges pending against him in the Chief Presidency Magistrate's Court at Bombay, India, and to abide the order of the President of the United States in the premises, until the further orders of the Court.

It is further ordered by the Court that this cause be consolidated with causes Nos. 15,927 and 15,928 of the docket of 205 this Court, entitled "In the matter of extradition proceedings versus Charles Glen Collins."

(Signed) RUFUS E. FOSTER,
*Judge of the United States District Court
 for the Eastern District of Louisiana.*

New Orleans, La., November 21st, 1918.

Issued November 21st., 1918.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

To the Marshal of the Eastern District of Louisiana, or Either of His Deputies, and the Keeper of Either of the Gaols in Said District, Greeting:

These are, in the name of the President of the United States of America, to command you, the said Marshal or Deputies, and each of you, forthwith to convey and deliver into the custody of the Keeper of the House of Detention for the Parish of Orleans, State of Louisiana, the body of Charles Glen Collins, directed by order rendered this day in these proceedings, to be held for extradition to British India for trial on charges pending against him before the Chief Presidency Magistrate Court at Bombay, India, as set out in the complaining affidavits herein;

And you the said Keeper, in the name of the President of the United States of America, aforesaid, are hereby commanded to receive the said Charles Glen Collins into your custody in said House of Detention and him there safely to keep or be otherwise discharged in due course of law, until the further orders of the court.

Hereof fail not at your peril.

Witness, The Honorable Rufus E. Foster, Judge of the United States District Court, this 21st day of November in the year of our Lord one thousand nine hundred and eighteen.

[SEAL.] (Signed) RUFUS E. FOSTER,
*Judge of the United States District Court
for the Eastern District of Louisiana.*

Marshal's Return on Commitment.

Filed November 27, 1918.

Received by U. S. Marshal, New Orleans, La., November 22nd, 1918. Having previously arrested the within named Charles Glen Collins, and having him in custody I take notice of this warrant and am holding him in answer to same.

FRANK M. MILLER,
U. S. Marshal,
(Signed) By SAM W. TAYLOR, *Deputy.*

[Endorsed:] U. S. District Court. No. 15,936. In the Matter of Extradition Proceedings vs. Charles Glen Collins. Commitment.

207

Certificate of Judge.

Issued November 27, 1918.

THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

United States District Court, Eastern District of Louisiana.

Nos. 15927, 15928, and 15936 (Consolidated).

In the Matter of — CHARLES GLEN COLLINS.

I, Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana, being duly authorized to issue warrants for the extradition of fugitives from justice of foreign governments, do hereby certify that, pursuant to complaints of Gerard M. Loly, British Vice Consul at the City of New Orleans, and of Tom F. Carlisle, British Consul General at the City of New Orleans, duly made oath, charging Charles Glen Collins with having committed the crime of obtaining property by false pretenses from Pohoomul Bros., Ga-

reshi, Lall & Sons and Mahomed Alli Zaimal Ali Raza, within the jurisdiction and government of British India, and with being a fugitive from justice of said country, I issued my warrants for the arrest of the said Charles Glen Collins, and by virtue thereof he was by the Marshal of the United States for said District arrested and brought before me for examination and hearing upon said charges, and that said examinations and hearings were held on the 30th day of October, A. D. 1918, and on the 21st day of November, A. D. 1918, Robert H. Marr, Esq., appearing as counsel for the British Government, and J. Zach Spearing, Esq., appearing as counsel for the defendant, and that I deem the evidence before me sufficient to sustain the charges under the law, and the provisions of the treaty of extradition between the government of the United States and that of the British Government, and that I have accordingly, by my warrants under my hand dated October 30th, 1918, and November 21st, 1918, committed him

208 to the House of Detention for the Parish of Orleans, State of Louisiana, to await the order of the President of the United States in the premises.

I further certify that the annexed depositions of Udharn Partabrai, Lokumull Sahijran, John Dunstan Sherstan Baker and Arthur Fuller, together with certificates of James A. Smith, Consul General for the United States of America, at Calcutta, India, A. H. Grant, Secretary to the Government of India in the Foreign and Political Departments, and Chunilal H. Setalvad, Acting Chief Presidency Magistrate, Bombay, India, and depositions of Brijmohanlal Lalla Ramkisondas, Dattatraya Ramchandra, Arthur Fuller, Mohomedali Zaimal Ali Raza, Kaikhushru Dadabhoy Rustomji Dady and John Mathew Perreira, together with certificates of James A. Smith, Consul General for the United States of America, at Calcutta, India, A. H. Grant, Secretary to the Government of India in the Foreign and Political Departments, and A. H. S. Aston, Chief Presidency Magistrate, Bombay, India, was all of the testimony considered by me on said application;

I further annex the depositions of John Richard Campbell Howie and Edward Curtice, together with certificates of Sir John Dickinson, Knight, Chief Magistrate of the Police Courts of Metropolis (London), J. W. Holderness, Under Secretary of State for India, and Sheldon Leavitt Crosby, Secretary of Embassy of United States, and depositions of James Paterson and Hugh Allan, together with certificates of J. W. Holderness, Under Secretary of the State of India, Sheldon Leavitt Crosby, Secretary to Embassy of United States, John Lamb, Assistant Under Secretary for Scotland, and A. Hirtzel, Assistant Under Secretary of State for India, which on objections of counsel for said Charles Glen Collins, I excluded.

I further annex a statement of counsel for Charles Glen Collins of certain facts he proposed to show by said Collins in his own behalf and by Wm. H. Smith, in behalf of said Collins (see accompanying record of proceedings in Court on October 30th, 1918, and November 21st, 1918), which evidence I considered to be matters of defense before the India Court and not relevant or admissible before me.

Witness my hand this 27 day of November, A. D. 1918.

[SEAL.] (Signed) RUFUS E. FOSTER,

*Judge of the District Court of the United States
for the Eastern District of Louisiana.*

210

Judgment.

Filed Feb. 21, 1919.

In the United States District Court for the Eastern District of Louisiana.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

As to the commitment of relator to await the action of the President of the United States on the application for the extradition of relator to answer the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza, relator's application for habeas corpus is denied.

As to the commitment based on the charge of obtaining property by false pretenses from Pohoomull Brothers and on the charge of obtaining property by false pretenses from Ganeshi Lall & Sons, the writs of habeas corpus are granted, but relator is remanded to the House of Detention to await further proceedings in said last two named affidavits.

And it is further ordered that, as to the said two affidavits last mentioned, this cause be and is hereby remanded to the Honorable Rufus E. Foster, Judge, to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana.

Given this 21st day of February, 1919.

(Signed)

W. L. GRUBB,
U. S. District Judge.

211

EXHIBIT.

Filed March 6, 1919.

Before Saml. M. Hitchcock, U. S. Commissioner, &c.

In the Matter of the Application for the Extradition of CHARLES G. COLLINS under the Treaties Between the United States and Great Britain.

UNITED STATES OF AMERICA,

Southern District of New York, ss:

C. Olive Bayley, His Britannic Majesty's Consul General at the Port of New York, being duly sworn deposes and says upon information and belief:

First. That heretofore and on or about the 2nd day of February in the year 1917 at Bombay, British India and within the jurisdiction of His Britannic Majesty, one Charles G. Collins did commit the crime of obtaining property by false pretenses, to wit: did on or about the 2nd day of February in the year 1917 at Bombay, aforesaid, obtain by false pretenses a pearl necklace of the value of Seventy-five Thousand Rupees, of the value in the moneys of the United States of about \$24,330, from the firm of Pohwomul Brothers of Bombay, aforesaid, by falsely and fraudulently representing himself as a Lieutenant Colonel attached to the H. O. W. Royal Marines on furlough, and delivered to the said firm of Pohwomul Brothers for the said pearl necklace a draft for Seventy-five Thousand Rupees, which he 212 falsely represented would be paid upon presentation, which draft upon presentation was dishonored and unpaid.

Second. That the said Charles G. Collins is a fugitive from the justice of British India and is now within the territory of the United States.

Third. That the crime with which the said Charles G. Collins is herein charged is an offence within the treaties between the United States and Great Britain.

Fourth. That deponent's information and belief are based upon two messages received by cable, one from His Britannic Majesty's Secretary of State for Foreign Affairs, and one from the Governor of Bombay, which messages also state that a Warrant has been issued in Bombay for the apprehension of the said Charles G. Collins for the crime herein alleged against him.

(Signed)

C. OLIVE BAYLEY.

Subscribed and sworn to before me this 5th day of November 1917.

(Signed)

SAM M. HITCHCOCK,
U. S. Commissioner, Southern District of New York.

SAM M. HITCHCOCK,

U. S. Commissioner, and also a Commissioner Especially Appointed to Execute the Provisions of Title LXVI of the Revised Statutes of the United States for Giving Effect to Certain Treaty Stipulations Between This and Foreign Governments for the Apprehension and Delivery up to Certain Offenders.

I hereby certify the foregoing to be a true copy of the Original Complaint in the above entitled cause filed in my office this 5th day of November 1917.

[SEAL.]

(Signed)

SAM M. HITCHCOCK,

*United States Commissioner,
Southern District of New York.*

A true copy.

[SEAL.]

(Signed)

A. H. BROWNE,

U. S. Commissioner.

213 The President of the United States of America to Any Marshal of the United States to the Deputies of Any Such Marshal or Either of Them:

Whereas, a complaint has been made on oath under the treaties between the United States and Great Britain, signed at Washington on the ninth day of August One thousand eight hundred and forty-two and ratifications were exchanged at London, on the thirteenth day of October in the same year, and of the conventions supplementary to the said Treaty between the same High Contracting Parties, concluded and signed at Washington July 12th, 1889 and December 13th, 1900 before me, Saml. M. Hitchcock, one of the Commissioners appointed by the District Court of the United States for the Southern District of New York and also a Commissioner especially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States for giving effect to certain treaty stipulations between this and foreign Governments for the apprehension and delivery up of certain offenders: that heretofore and on or about the end *day* of February in the year 1917 at Bombay, British India and within the jurisdiction of his Britiannie Majesty, one Charles G. Collins did commit the crime of obtaining property by false pretenses, to wit: did on or about the 2nd day of February in the — 1917 at Bombay, aforesaid, obtain by false pretenses a pearl necklace of the value of Seventy-five Thousand Rupees, of the value in the moneys of the United States of about \$24,330, from the firm

214 of Pohwomull Brothers of Bombay, aforesaid, by falsely and fraudulently representing himself as a Lieutenant Colonel attached to the H. O. W. Royal Marines on furlough, and delivered to the said firm of Pohwull Brothers for the said pearl necklace a draft for Seventy-five Thousand Rupees, which he falsely represented would be paid upon presentation, which draft upon presentation was dishonored and unpaid; that the said Charles G. Collins is a fugitive from the justice of British India and is now within the territory of the United States of America; that the crime with which the said Charles G. Collins is charged is an offense within the treaties between the United States and Great Britain.

Now therefore, we command you forthwith to take the said Charles G. Collins and bring him before me the said Commissioner at my office Room 314 in the Post Office Building, in the City of New York, or before the nearest Justice, Judge or Commissioner in the District in which the said Charles G. Collins is apprehended, authorized to act in proceedings for the extradition of Fugitives from the justice of foreign governments as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said Charles G. Collins may be heard and considered, and if deemed sufficient to sustain the charge that the same may be certified together with a copy of all the proceedings to the secretary of State that a warrant may issue for his surrender pursuant to the said Treaties.

Witness my hand and official seal this 5th day of November in the year One thousand nine hundred and seventeen.

(Signed) SAM M. HITCHCOCK,

U. S. Commissioner, and also a Commissioner Especially Appointed to Execute the Provisions of Title LXVI of the Revised Statutes of the United States for Giving Effect to the Certain Treaty Stipulations Between This and Foreign Government for the Apprehension and Delivery up of Certain Offenders.

A true copy.

[SEAL.]

(Signed)

A. H. BROWNE,

U. S. Commissioner.

215 Received this warrant on the 12 day of November, 1917, at New Orleans and executed the same by arresting the within named Charles G. Collins by producing him before A. H. Browne, U. S. Commissioner on the 12th day of November, 1917, and have his body now in court, as within I am commanded.

FRANK M. MILLER,

U. S. Marshal, Eastern District of Louisiana.

D. A. SANDERS, *Deputy.*

12th day of November, 1917.

216

Petition & Order for Appeal.

Filed March 6, 1919.

United States District Court in and for the Eastern District of Louisiana.

No. 15959.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus & Certiorari.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

The petition of Charles Glen Collins, applicant in the above entitled and numbered proceedings for writs of habeas corpus and certiorari, respectfully represents—

That there is error to his prejudice in the judgment rendered and signed in these proceedings on the 21st day of February 1919 and that petitioner is aggrieved thereby and desires to take an appeal to the Honorable the Supreme Court of the United States with supersedeas; that petitioner has prepared and files herewith his assignment of error and is ready and prepared to furnish a bond with good and solvent surety in such amount as the Court may order conditioned

as the law directs, for the payment of damages and costs of appeal and for any other penalty that may be inflicted or named.

Wherefore, petitioner prays that he be granted an appeal from the judgment rendered and signed in these proceedings on the 21st day of February 1919 returnable to the Honorable the Supreme Court of the United States within the time and in the manner pointed out by law upon petitioner furnishing a bond for such amount as may be ordered by this Court conditioned as the law directs and for 217 the payment of damages and *and* costs of appeal or any other penalty that may be inflicted or named; and that citation of appeal issue.

(Signed)

J. ZACH SPEARING, *Atty.*

Order.

The above and foregoing petition of Charles Glen Collins praying that he be allowed to appeal to the Supreme Court of the United States from the judgment and decree rendered and signed in these proceedings on the 21st day of February 1919 and that a certified copy of the transcript of the record upon the said order and decree be transmitted to the Supreme Court of the United States, and the Court being of the opinion that the said Charles Glen Collins is entitled to the appeal as prayed for by him

It is ordered that an appeal to the Supreme Court of the United States from the judgment and decree rendered and signed in these proceedings on the 21st day of February 1919 be and the same is hereby allowed and that a certified transcript of the record of all the proceedings herein and of the returns and pleadings in this case duly authenticated be forthwith transmitted to the Supreme Court of the United States.

It is further ordered, that the bond of appeal conditioned as the law directs and for the payment of damages and costs of appeal, or any other penalty that may be inflicted or named, be and the same is hereby fixed at the sum of Five Hundred & 00/100 (\$500.00) Dollars and that a stay of procedure upon the said judgment and decree appealed from be and the same is hereby granted.

This 3rd day of March, 1919.

(Signed)

W. L. GRUBB,
United States District Judge.

Filed March 6, 1919.

United States District Court in and for the Eastern District of Louisiana.

No. 15959.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus & Certiorari.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

Now comes Charles Glen Collins, petitioner herein by J. Zach. Spearing, his Attorney, and makes and files the following assignment of errors which he alleges occurred upon the hearing herein and in the entry of the judgment or decree in these proceedings from which the said Charles Glen Collins has taken an appeal and upon which assignment of errors he will rely in the prosecution of his appeal herein:

1st. The Court erred in dismissing the writ of habeas corpus as to the charge by Mahomed Alli Zaimal Ali Raza sued out by petitioner herein.

2nd. The Court erred in remanding petitioner to the House of Detention to await further proceedings on the two affidavits of Pohoomull Bros., and of Ganeshi Lall & Sons notwithstanding that according to the judgment appealed from the writ of habeas corpus in those two cases were granted.

3rd. The court erred in denying the writ of habeas corpus as to one affidavit and granting the writ of habeas corpus in part as to the other affidavits, but the Court should have granted the writ of habeas corpus in its entirety and should have ordered petitioner discharged from custody.

219 4th. The Court erred in holding that petitioner was lawfully held in custody by the Marshall of the United States for the Eastern District of Louisiana to await the action of the Department of State of the United States upon the application to extradite him to the City of Bombay in British India.

5th. The Court erred in holding that petitioner was lawfully held, imprisoned and restrained of his liberty by the Marshall of the United States for the Eastern District of Louisiana and was not entitled to be discharged therefrom.

6th. The Court erred in holding that the informations filed against petitioner before the Esplanade Police Court of Bombay, British India charging petitioner with having committed the offense of cheating under Section 420 of the Indian Penal Code were sufficient under the extradition treaties between the Government of the United States and the Government of Great Britain proclaimed November 10th, 1842 and the supplementary extradition treaty be-

tween the same Countries proclaimed April 22nd, 1901, or any other convention or treaty in force between those two Countries, to arrest, hold or detain petitioner, or to justify his extradition because the offense of cheating is not one of the offenses for which a person, and particularly for which petitioner, could be extradited.

7th. The Court erred in not holding that petitioner was denied due process of law because Hon. Rufus E. Foster, United States District Judge sitting as Extradition Commissioner, refused petitioner the right and opportunity accorded him by the laws of and practice in the State of Louisiana to testify or to make a voluntary declaration

in his own behalf and also of the refusal by the said Extra-
220 dition Commissioner of the right and opportunity accorded him by the said laws of and practice in the State of Louisiana to have other witnesses than himself examined in his own behalf and the like refusal of the right and opportunity to produce and file in evidence documentary evidence in his behalf.

8th. The Court erred in not holding that petitioner was denied by Hon. Rufus E. Foster, the right granted to and possessed by him under the tenth article of the treaty between the United States and the Kingdom of Great Britain proclaimed November 10th 1842 to the protection of the laws of and practice in the State of Louisiana in which petitioner was arrested and according to the laws of and practice in which said State petitioner had and has the right to testify and to make a voluntary declaration in his own behalf and to have witnesses examined and to introduce and to have admitted documentary evidence in his own behalf before a Committing Judge or Magistrate.

9th. The Court erred in not holding that petitioner was denied by the said Hon. Rufus E. Foster the protection granted to and possessed by him under the fifth amendment of the Constitution of the United States of America in that he had been and is being deprived of his liberty without due process of law because under the treaties and conventions between the Kingdom of Great Britain and the United States of America it is expressly provided that no person shall be surrendered by either of the two Nations concerned except upon evidence of criminality "as, according to the laws of the place

221 where the fugitive, or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed," and that according to the laws of and practice in the State of Louisiana in which State petitioner was arrested he was entitled to testify in his own behalf and was also entitled to have witnesses examined in his own behalf before the Committing Judge or Magistrate and likewise to have introduced and admitted documentary evidence in his own behalf and that each and all of his rights were denied to your petitioner by the said Hon. Rufus E. Foster.

10. The Court erred in not holding that no legal proof was submitted to or produced before the Hon. Rufus E. Foster of the commission by petitioner of the crime or offense mentioned in the complaints of Thomas F. Carlisle, British Consul General at the City of New Orleans, or of the crime or offense mentioned in the authenti-

eating certificates attached to the documents which were admitted in evidence or mentioned in the information or charges filed before the Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate of said Police Court, or of either of said crimes or offenses, or of any other crime or offense.

11th. The Court erred in not holding that no legal proof was submitted to or produced before Hon. Rufus E. Foster on which reasonable ground for a belief that petitioner had committed the crime or offense mentioned in the complaints of Hon. Thomas F. Carlisle, British Consul General at the City of New Orleans or mentioned in the authenticating certificates attached to the documents offered in evidence or mentioned in the informations or charges filed before the said Esplanade Police Court of Bombay, India, or in the certificates signed by the Chief Presidency Magistrate of said 222 Police Court, or of either or any of said crimes or offenses, or any other crime or offense could be based.

12th. The Court erred in not holding that none of the evidence, papers or exhibits which were submitted to the Hon. Rufus E. Foster and by him admitted in evidence over the objection and protest of petitioner were authenticated in accordance with the provisions of the statutes in such cases made and provided so as to entitle them to be received in evidence in the proceedings before the said Hon. Rufus E. Foster.

13th. The Court erred in not holding that the transactions referred to in the depositions and documents which were admitted in evidence over the objection and protest of petitioner are not crimes nor offenses under the laws of the State of Louisiana in which your petitioner was arrested, nor under the laws of British India where it is alleged the said transactions took place, but the Court should have held that the said transactions constituted and were mere commercial transactions in which credit was freely and voluntarily extended.

14th. The Court erred in not holding that even if the said transactions are criminal according to the laws of British India, they do not constitute an offense which, under the treaties or conventions in force between the United States and the Kingdom of Great Britain, are extraditable or for which extradition can be had.

15th. The Court erred in not holding that there is a fatal variance in each of the three sets of documents from Bombay, India, offered, introduced and admitted in evidence over protest by petitioner 223 between the charge brought against petitioner in the Esplanade Police Court of Bombay, India which is the offense of cheating under Section 420 of the Penal Code of India and the offense mentioned in the authenticating certificates of the Secretary for the Indian Government and the Consul General of the United States at Calcutta, India which is the offense of obtaining valuable property by false pretenses, which said two offenses are not the same but are different in nature and character in this that the offense of cheating under Section 420 of the Penal Code of India which is not extraditable under the treaties and conventions existing between the United States and the Kingdom of Great Britain is the failure to perform a promise of future payment where the intent not to perform is

proved to have existed at the time of making of the promise and the gist of the offense of obtaining valuable property by false pretenses which is extraditable is, according to the laws enforced in the State of Louisiana, a false representation concerning a past or present fact.

16th. The Court erred in not holding that petitioner was being deprived of his liberty without due process of law and in violation of the provisions of the treaties and conventions between the United States and the Kingdom of Great Britain and particularly in violation of the provisions of the tenth article of the treaty between the said two Countries dated August 9th 1842 and proclaimed November 10th 1842 and in violation of the fifth amendment to the Constitution of the United States of America and in violation of the laws of Louisiana.

224 And petitioner, Charles Glen Collins, prays that the judgment and decree made and rendered herein on the 21st day of February 1919 for the errors aforesaid and for other errors in the record and proceedings herein *made by* reversed and set aside and that petitioner be restored to all things which he lost or has lost by reason of the said judgment and that the United States District Court for the Eastern District of Louisiana be directed to enter in favor of petitioner a judgment and decree maintaining the writ of habeas corpus issued in these proceedings and discharging petitioner from the custody of the Marshal of the United States of the Eastern District of Louisiana and restoring petitioner to his liberty.

(Signed)

J. ZACH SPEARING,
Atty. for Charles Glen Collins.

Presented this 3rd day of March 1919.

(Signed)

W. L. GRUBB,
District Judge.

225

Bond.

Filed March 6, 1919.

Know all men by these presents, That we, Charles Glen Collins, as principal, and United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto Frank M. Miller, U. S. Marshal and Harry J. Carter, Clerk of the U. S. District Court, both of the Eastern District of Louisiana, and any and all others concerned in the full and just sum of Five Hundred & 00/100 (\$500.00) dollars to be paid to the said parties or any of them, their certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this Sixth day of March in the year of our Lord, one thousand nine hundred and Nineteen.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, entitled In the matter of the Application of Charles Glen Collins for Writs of Habeas Corpus and Certiorari a

judgment was rendered against the said Charles Glen Collins and the said Charles Glen Collins having obtained an order of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Frank M. Miller, U. S. Marshal for the Eastern District of Louisiana citing and admonishing him to be and appear before the United States Supreme Court, to be holden at Washington, District of Columbia, within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Charles Glen Collins shall prosecute said appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) **CHARLES GLEN COLLINS.** [SEAL.]
" **UNITED STATES FIDELITY & GUAR-
ANTY CO.,**
By **T. B. NORTON,** [SEAL.]
Attorney in Fact.

Sealed and delivered in presence of—

(Signed) J. ZACH SPEARING,
" SYLVESTER TITUS.

Approved by—

(Signed) W. L. GRUBB,
District Judge.

[Endorsed:] U. S. District Court, Eastern District of Louisiana.
No. 15,959. In the Matter of the Application of Charles Glen Col-
lins. Bond for Writs of Habeas Corpus, etc.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

Personally Appeared, Mr. Thomas B. Norton, Agt. U. S. Fidelity & Guaranty Company, who being duly sworn, deposes and says that said company is the surety on the within bond, that said company is authorized to do business in the State of Louisiana and is worth the full sum of five hundred & 00/100 (\$500.00) Dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) **T. B. NORTON,**
Agt. & Atty. in Fact.

Subscribed and sworn before me this 6th day of March 1919.

[SEAL.] (Signed) J. ZACH SPEARING,
Not. Pub.

226

Principle.

Filed March 12, 1919.

In the United States District Court for the Eastern District of Louisiana.

No. 15959.

In the Matter of CHARLES GLEN COLLINS Praying for Writs of Habeas Corpus & Certiorari.

The Clerk of the United States District Court for the Eastern District of Louisiana is hereby directed in making up the Transcript for the Supreme Court of the United States to omit therefrom the following, to wit:

The affidavits of James Paterson, Hugh Allan, A. S. D. Thomson, John Richard Campbell Howie and Edward Courtice which were taken respectively in Glasgow and London the said affidavits having been excluded by the ruling of the Hon. Rufus E. Foster, Judge of the United States District Court.

New Orleans, La., March 12th, 1919.

(Signed)

J. ZACH SPEARING,
Atty. for Charles Glen Collins.227 *Petition of Tom F. Carlisle, British Consul General, and Order for Appeal.*

Filed March 28th, 1919.

In the United States District Court for the Eastern District of Louisiana, at New Orleans.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habens Corpus and Certiorari.

To the Honorable the United States District Court for the Eastern District of Louisiana:

The petition of Tom F. Carlisle, British Consul General, respectfully represents:

That there is error to the prejudice of petitioner in the judgment herein rendered and signed on February 21st, 1919, and that your Petitioner as representative of said British Government is aggrieved thereby, and desires to take an appeal to the Honorable, the Supreme Court of the United States with supersedeas.

That Petitioner has prepared and files herewith his assignment of errors, and is ready and prepared to furnish bond with good and solvent surety, if, in the opinion of this Honorable Court, it is

necessary that a bond be given, in such sum as this Court may order, conditioned as the law directs.

Wherefore, Petitioner prays that he be granted an appeal from said judgment, returnable to the Supreme Court of the United States, as by law provided, upon Petitioner furnishing a bond for such amount as this Court may order, conditioned as by law directed, and that citation of appeal herein issue.

(Signed)

ROBERT H. MARR,

For Petitioner.

Order.

It is ordered that an appeal to the Supreme Court of the United States from the judgment and decree herein rendered and signed February 21st, 1919, be, and the same is hereby allowed 228 Petitioner, returnable to the Honorable, the Supreme Court of the United States April 7th, 1919.

It is further ordered that bond of appeal, conditioned as by law directed, be and the same is hereby fixed at the sum of Five Hundred (\$500.00/100), and that a stay of proceedings upon said judgment and decree appealed from be, and the same is hereby granted.

(Signed)

W. L. GRUBB,

United States District Judge.

March 28, 1919.

229 *Assignment of Errors by Tom F. Carlisle, British Consul General.*

Filed March 28, 1919.

In the United States District Court for the Eastern District of Louisiana, at New Orleans.

In the Matter of the Application of CHARLES GLEN COLLINS for Writs of Habeas Corpus and Certiorari.

To the Honorable the United States District Court in and for the Eastern District of Louisiana:

Now comes Tom F. Carlisle, British Consul-General, Petitioner, through his Counsel, Robert H. Marr, who makes and files the following assignment of errors, which he alleges occurred upon the hearing herein and the entry of the judgment in the proceedings from which the said Tom F. Carlisle, British Consul-General, has taken an appeal, and upon which assignment of errors he will rely in the prosecution of this appeal.

That it was error as to the commitment based on the charge of obtaining property by false pretences from Pohoomul Brothers, and on the charge of obtaining property by false pretences from Ganeshi Lall & Sons, to grant writs of habeas corpus and to remand relator to the House of Detention to await further proceedings, and the further order that the cause be remanded to the Honorable Rufus E. Foster to the end that relator be given an opportunity of

introducing such evidence as he might offer at a preliminary examination under the law of Louisiana.

That Petitioner specially assigns as error the granting of the writs of habeas corpus as hereinabove recited.

(Sig.)

ROBERT H. MARR,

For Petitioner.

Presented this 28th day of March, 1919.

(Signed)

W. L. GRUBB,

District Judge.

230

Bond of Appeal.

Filed March 28, 1919.

Know all men by these presents, That we, Tom F. Carlisle, British Consul General at New Orleans, La., as principal, and Robert H. Marr, of New Orleans, La., as surety, are held and firmly bound unto Charles Glen Collins in the full and just sum of Five Hundred dollars to be paid to the said Charles Glen Collins his certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 28th day of March, in the year of our Lord, one thousand nine hundred and nineteen.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between United States on the relation of Charles Glen Collins vs. Frank M. Miller, United States Marshal, praying for a writ of Habeas Corpus in the suit No. 15,959 of the docket of said Court, a Judgment was rendered against the said Tom F. Carlisle British Consul General and the said Tom F. Carlisle, British Consul General having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the Judgment in the aforesaid suit, and a citation directed to the said Charles Glen Collins citing and admonishing him to be and appear before the Supreme Court of the United States, to be holden at Washington, D. C., within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Tom F. Carlisle, British Consul General shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed)

TOM F. CARLISLE, [SEAL.]

British Consul General.

By His Atty., ROBERT H. MARR. [SEAL.]

ROBERT H. MARR. [SEAL.]

Sealed and delivered in presence of—

— — — — —

— — — — —

Approved by—

(Signed) W. L. GRUBB,

U. S. District Judge.

[Endorsed:] U. S. District Court, Eastern District of Louisiana, No. 15,959. United States ex rel. Charles Glen Collins. Bond. Frank M. Miller, U. S. Marshal.

231 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Clerk's Office.

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 231 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors and proceedings in the case of "United States Ex Rel. Charles Glen Collins, versus Frank M. Miller, United States Marshal," No. 15,959, of the Docket of said Court (made in accordance with the preceipe for transcript copied at page 226 of said transcript) in the matter of the said appeal taken by the Relator Charles Glen Collins, and also a true and perfect copy of the Petition and Order for Appeal, Assignment of Errors and Bond of Appeal taken by Tom F. Carlisle, British Consul General.

Witness my hand, and the seal of said Court, at the City of New Orleans, Louisiana, this 29th day of March, A. D., 1919.

[Seal District Court of the United States, Eastern District of Louisiana, New Orleans Division.]

H. J. CARTER, Clerk.

232 Issued for J. Zach. Spearing, Atty. for Relator.

THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Frank M. Miller, United States Marshal for the Eastern District of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and Order of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein United States ex rel. Charles Glen Collins, is Appellant, and Frank M. Miller, United States Marshal, is Appellee, in the cause wherein, United States, ex rel. Charles Glen Collins, is Relator, and Frank M. Miller, United States Marshal, is Defendant, No. 15,959 of the docket of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to show cause,

if any there be, why the judgment rendered against the said Relator, Charles Glen Collins, as in said Petition and Order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William L. Grubbs, Judge of the United States District Court, at New Orleans, La., this 8th day of March in the year of our Lord one thousand nine hundred and nineteen.

(Signed)

WM. L. GRUBBS,
Judge District Judge.

Clerk's Office.

A true copy.

H. J. CARTER, *Clerk.*

New Orleans, La., March 10, 1919.

Received by U. S. Marshal, New Orleans, La., March 10th, 1919, and on the same day month and year I served the original of which this is a certified copy on Frank M. Miller, U. S. Marshal, by handing same to him in person at New Orleans, La.

FRANK M. MILLER,
U. S. Marshal,
By SAM W. TAYLOR, *Deputy.*

[Endorsed:] Return. United States District Court, Eastern District of Louisiana. N. No. 15,959. United States ex rel. Charles Glen Collins. Frank M. Miller, United States Marshal. Citation of Appeal. Marshal's Return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Mar. 28, 1919. Hy. J. Loisil, Dep. Clerk.

233 Issued for Robert H. Marr, Atty.

THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana,

The President of the United States to Charles Glen Collins, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and order of appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein Tom F. Carlisle, British Consul General, is Appellant, and United States, ex rel. Charles Glen Collins is Appellee, in the cause wherein, United States, ex rel. Charles Glen Collins, is Relator and Frank M. Miller, United States Marshal, is Defendant No. 15,959 of the docket of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, to show cause, if any there be, why the

judgment rendered against the said Tom F. Carlisle, British Consul General as in said Petition and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William I. Grubb, Judge of the United States District Court, at New Orleans, La., this 28th day of March in the year of our Lord one thousand nine hundred and nineteen.

(Signed)

W. I. GRUBB, *Judge.*

Clerk's Office.

A true copy.

H. J. CARTER, *Clerk.*

New Orleans, La., March 28, 1919.

Received by U. S. Marshal, New Orleans, La., March 29th, 1919, and the same day month and year I served the original of which this is a certified copy on Charles Glen Collins by handing the same to him in person at New Orleans, Louisiana.

FRANK M. MILLER,

U. S. Marshal,

By SAM W. TAYLOR,

Deputy U. S. Marshal.

[Endorsed:] Return, United States District Court, Eastern District of Louisiana, N. No. 15,959, United States, Ex Rel, Charles Glen Collins, Frank M. Miller, United States Marshal, Citation of Appeal, Marshal's Return, No. —, U. S. District Court, Eastern District of Louisiana, New Orleans Division, Filed Mar. 29, 1919. E. V. Vendling, Dy. Clerk.

Endorsed on cover: File No. 27,063, E. Louisiana D. C. U. S. Term No. 977. Charles Glen Collins, appellant, vs. Frank M. Miller, U. S. Marshal for the Eastern District of Louisiana. File No. 27,064, Term No. 978. Tom F. Carlisle, British Consul General, appellant, vs. Charles Glen Collins. Filed April 11th, 1919. File Nos. 27,063 and 27,064.

STIPULATION FOR ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 977.

CHARLES GLEN COLLINS, APPELLANT,

v.s.

FRANK M. MILLER, U. S. MARSHAL FOR THE EASTERN
DISTRICT OF LOUISIANA.

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a In the Supreme Court of the United States.

No. 977, October Term, 1919.

CHARLES GLEN COLLINS, Appellant,

vs.

FRANK M. MILLER, Appellee.

Stipulation for Addition to Record.

Application of Appellee, suggesting dimunition of the record, and praying that the depositions of James Paterson and Hugh Allan, taken before A. S. D. Thomson, Sheriff Substitute of Lanakshire, and the depositions of John Richard Campbell Howie and Edward Curtise, taken before Sir John Dickinson, Knight, chief Magistrate of the Bow Street Police Court, London, and the documents annexed to the said last named depositions be made a part of the record herein.

Comes now Appellee, Frank M. Miller, United States Marshal for the Eastern District of Louisiana, and respectfully suggests that, upon the trial of this case before the Honorable Rufus E. Foster, sitting as Extradition Commissioner, the following were offered in evidence, to-wit:

The depositions of James Paterson and Hugh Allan, taken before A. S. D. Thomson, Sheriff Substitute of Lanakshire, and the depositions of John Richard Campbell Howie and Edward Curtise, taken before Sir John Dickinson, Knight, Chief Magistrate of the Bow Street Police Court, London, together with certain documents annexed to said last mentioned depositions, were offered on behalf of the British Consul-General at New Orleans, which said offers were ruled out by said Honorable Rufus E. Foster, sitting as Extradition Commissioner, but to which ruling of said Extradition Commissioner bills of exception were reserved; that, thereafter, Charles Glen Collins applied to the Honorable William I. Grubb, United States District Judge sitting at New Orleans, for the issuance of

b habeas corpus; that said writ was tried upon the entire record as made up on the extradition proceedings held before the Honorable Rufus E. Foster, sitting as Extradition Commissioner said proceedings including the depositions and documents hereinbefore mentioned.

Now comes Appellee, Frank M. Miller, United States Marshal, as aforesaid, who shows that Counsel representing said Charles Glen Collins, in making up his *præpipe* to the Clerk of the United States District Court for the Eastern District of Louisiana at New Orleans, omitted from said record the depositions and documents hereinabove mentioned.

Now your Appellee shows that said depositions and documents

annexed are a proper part of the record and should be now added thereto.

Wherefore, the consent of Counsel representing said Charles Glen Collins, which is hereto annexed, being considered, Appellee prays that, without the formal issuance of a writ of certiorari, a certified copy of said documents, together with the original documents annexed to said depositions, be attached hereto, and, when printed copies thereof are filed, be accepted and made a part of the records in this case, and, as in duty bound, petitioner will ever pray.

DONELSON CAFFERY,
Attorney for Frank M. Miller, Appellee.

I, J. Zach Spearing, of Counsel for Charles Glen Collins, consent that the depositions and documents hereinabove described shall, without the necessity of a formal application for certiorari be made a part of the record, reserving, however, all rights which the said Charles Glen Collins may have in the premises, it being the sole purpose of this consent to dispense Appellee with the necessity of applying for a certiorari suggesting diminution of the record, and without agreeing that said documents are properly part of the record.

J. ZACH SPEARING,
Attorney for Charles Glen Collins, Appellant.

In the Supreme Court of the United States,

No. 977, October Term, 1918.

CHARLES GLEN COLLINS, Appellant,

vs.

FRANK M. MILLER, Appellee.

Transcript of Depositions of James Paterson, Hugh Allan, John Richard Campbell Howie, and Edward Curtice, Copied and Transmitted to the United States Supreme Court in Accordance with Written Stipulation between Robert H. Marr, Esq., Counsel for Frank M. Miller, and J. Zach Spearing, Esq., Counsel for Charles Glen Collins, Copied at Page 26 Hereof.

London, August 15, 1918.

I, Sheldon Leavitt Crosby, Secretary of Embassy of the United States in London, hereby certify that the annexed papers, being a copy of the depositions of James Paterson and Hugh Allan taken before A. S. D. Thomson, Sheriff Substitute of Lanarkshire, and certified by the Assistant Under Secretary for Scotland, and a certificate signed by the Under Secretary of State for India, proposed to be used upon an application for the extradition from the United States of Charles Glen Collins, charged with the crime of obtaining goods by false pretenses alleged to have been committed in Bombay, India, are properly and legally authenticated so as to entitle them

to be received in evidence for similar purposes by the tribunals of India, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause the Seal of the Embassy to be affixed this fifteenth day of August in the Year of our Lord One Thousand Nine hundred and Eighteen.

[SEAL.] (Signed) SHELDON LEAVITT CROSBY,
Secretary of Embassy of the United States.

2 Under the Extradition Act 1873, Section 5.

At Glasgow, this sixth day of August, 1918, in presence of Alexander Stuart Duff Thomson, Esquire, one of the salaried Sheriffs Substitute of the Sheriffdom of Lanarkshire, in accordance with the Authority dated 2nd August 1918 issued by His Majesty's Secretary for Scotland to the Sheriff of Lanarkshire or one of the salaried Sheriffs Substitute, to take in manner prescribed by the Extradition Act, 1873, evidence for the purpose of a criminal matter pending in a Court or Tribunal at New York, in the United States of America, regarding an alleged theft by Charles Glen Collins of pearl buttons from Mohammed Alli Zamal Ali Raze at Bombay, India, in or about February 1917.

Compeared JAMES PATERSON, residing at Castlewood, Cathcart, who being sworn and examined depones:

I am a Director of the firm of William Collins Sons & Company, Limited, Book Publishers, Glasgow. I have been so for 10 years. That firm was formed into a limited liability company in 1880. I have been connected with the business for about/

(Sig.)

JAMES PATERSON.

(Sig.) HUGH ALLAN.

(Sig.) A. S. D. THOMSON.

3 about 36 years all together. I am aware of the existence of Charles Glen Collins. I have no personal acquaintance with him. I saw him once. I cannot describe him. He is somewhere about 45 years of age. It is within my knowledge that he has been serving in the Army during the present War. I do not know whether he is at present in the Army or not. He is not a partner of the Company of William Collins Sons & Company, Limited. He never was a partner in the business either before or since the formation of the Limited Liability Company. He is not and never has been a shareholder in the business. He is not and never has been an employee in the business. He never at any time had any personal connection whatever with the business. His great grandfather founded the business over a century ago and his father was for some years a Director but ceased to be so about 35 years ago. He has no authority whatever to draw on the Company. He never had an authority to draw on the Company. He could have no reason whatever for believing that a draft by him on the Company would

be honoured. He has two brothers Directors in the Company, Mr. William A. Collins and Mr. Godfrey P. Collins. These gentlemen are both in the Army. The latter is a member of Parliament. I am quite sure that neither of them would honour a draft by him on the Company/

(Signed)

JAMES PATERSON.

(Signed) HUGH ALLAN.

(Signed) A. S. D. THOMSON.

4 *Company.* During the last 5 or 6 years he has occasionally drawn on the Company for money. He has done so perhaps on four occasions altogether. None of these drafts was ever honoured. I remember a draft by him on the Company for £4000 in favor of someone in India being presented to us. I have not a note of the date. It may have been early in 1917. It was presented twice. Payment was refused each time. I think this was the last of his drafts.

All which I depone as truth.

(Signed)

JAMES PATERSON.

(Signed) HUGH ALLAN.

(Signed) A. S. D. THOMSON.

Compeared also HUGH ALLAN, residing at Glencaple, Strathaven, Lanarkshire, who being sworn and examined depones:

I am a Director of William Collins Sons & Company, Limited, Publishers, Glasgow. I have been connected with the business in different capacities for 45 years. I have no personal acquaintance with Charles Glen Collins. I know of his existence and know who he is. I corroborate in full the evidence of James Paterson.

All which I depone as truth.

(Signed)

HUGH ALLAN.

(Signed) A. S. D. THOMSON.

I/

5 I certify that the evidence contained in the foregoing Depositions was taken before me. Charles Glen Collins was not present.

(Signed)

A. S. D. THOMSON,

Sheriff Substitute of Lanarkshire.

Certified at the Scottish Office Whitehall for verification of the signature of Alexander Stuart Duff Thomson, Advocate, Sheriff Substitute of Lanarkshire.

(Signed)

JOHN LAMB,

Assistant Under Secretary for Scotland.

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Charles Glen Collins, charged with the crime of obtaining goods by false pretenses (called in the Indian Penal Code "Cheating") committed by him,

in Bombay, I hereby certify that to the best of my knowledge and belief the signature "A. S. D. Thomson" on the above depositions is the signature of Alexander Stuart Duff Thomson, Sheriff Substitute of Lanarkshire, Glasgow, having authority to receive the same, and I further certify that such documents so signed by a Sheriff substitute having magisterial jurisdiction in the place where the same were taken, and authenticated by a Minister of State and sealed with his official seal, would be received in evidence for similar purposes by the tribunals of India.

[SEAL.] (Signed)

A. HIRTZEL,
Assistant Under Secretary of State for India.

India Office, Whitehall, S. W., 12th August, 1918.

6 Certified at the Foreign Office for Legalization of the foregoing signature "A. Hirtzel."

London, August 14, 1918.

(Signed)

VICTOR WELLESLEY, [SEAL.]
*Assistant Under Secretary of State
for Foreign Affairs.*

Certified at the American Embassy in London for the authentication of the signature of Mr. Victor Wellesley, Assistant Under Secretary of State for Foreign Affairs, and of the Seal of His Britannic Majesty's Foreign Office, this fifteenth day of August, 1918.

(Signed)

[SEAL.]

SHELDON LEAVITT CROSBY,
Secretary of Embassy.

7 London, June 22, 1918.

I, Sheldon Leavitt Crosby, Secretary of Embassy of the United States in London, hereby certify that the annexed papers, being a copy of the depositions of James Paterson, Hugh Allan and A. S. D. Thomson, and of the evidence of John Richard Campbell Howie and Edward Curtice, and a certificate signed by the Under Secretary of State for India, proposed to be used upon an application for the extradition from the United States of Charles Glen Collins, charged with the crime of obtaining goods by false pretences alleged to have been committed in Bombay, India, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of India, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause the Seal of the Embassy to be affixed this Twenty-second day of June in the Year of our Lord One Thousand Nine Hundred and Eighteen.

(Signed)

[SEAL.]

SHELDON LEAVITT CROSBY,
Secretary of Embassy of the United States.

London, sitting at the Bow Street Police Court having authority to receive the same, and I further certify that such documents so signed by a Magistrate having jurisdiction in the place where the same were taken and authenticated by a Minister of State, and sealed with his official seal would be received in evidence for similar purposes by the tribunals of India.

(Signed) **J. W. HOLDERNESS,**
[SEAL.] *Under Secretary of State for India.*

India Office, Whitehall, S. W., 18th June 1918.

Certified at the Foreign Office for Legalization of the foregoing signature "J. W. Holderness."

London, June 19, 1918.

(Signed) **CYRE A. CROWE,**
[SEAL.] *Assistant Under Secretary of
State for Foreign Affairs.*

Certified at the American Embassy in London for the authentication of the Signature of Sir Cyre A. Crowe, K. C. M. G., K. C. B., Assistant Under Secretary of State for Foreign Affairs, and of the seal of His Britannic Majesty's Foreign Office this twenty-second day of June, One Thousand nine hundred and eighteen.

(Signed) **SHELDON LEAVITT CROSBY,**
Secretary of Embassy.

At Glasgow, this fifth day of June, 1918, in presence of Alexander Stuart Duff Thomson, Esquire, one of the salaried Sheriffs Substitute of the Sheriffdom of Lanarkshire, in accordance with the Authority dated 1st June 1918 issued by His Majesty's Secretary for Scotland to the Sheriff of Lanarkshire or one of the salaried Sheriffs Substitute, to take in manner prescribed by the Extradition Act 1873, evidence for the purpose of a criminal matter pending in a Court or Tribunal at New Orleans in the United States of America, regarding the purchase by Lieutenant Colonel Charles G. Collins, of certain articles of jewelery from the firm of Pohoomull Brothers, Bombay.

Compeard **JAMES PATERSON**, residing at Castlewood, Catheart, who being sworn and examined depones:

I am a Director of the firm of William Collins Sons & Company Limited, Book Publishers, Glasgow. I have been so for 10 years. That firm was formed into a limited liability company in 1880. I have been connected

(Signed) **JAMES PATERSON.**

(Signed) **HUGH ALLAN.**
" **A. S. D. THOMSON.**

15 connected with the business for about 36 years all together. I am aware of the existence of Charles Glen Collins. I have no personal acquaintance with him. I saw him once. I cannot describe him. He is somewhere about 45 years of age. It is within my knowledge that he has been serving in the Army during the present War. I do not know whether he is at present in the Army or not. He is not a partner of the Company of William Collins Sons & Company Limited. He never was a partner in the business either before or since the formation of the limited liability company. He is not and never has been a shareholder in the business. He is not and never has been an employee in the business. He never at any time had any personal connection whatever with the business. His great grandfather founded the business over a century ago and his father was for some years a Director but ceased to be so about 35 years ago. He has no authority whatever to draw on the Company. He never had any authority to draw on the company. He could have no reason whatever for believing that a draft by him on the company would be honoured. He has two brothers Directors in the company, Mr. William A. Collins and Mr. Godfrey P. Collins. These gentlemen are both in the Army. The latter is a member of Parliament. I am quite sure that neither of them would honour a draft by him on the Company. As During the last 5 or 6 years

(Signed) JAMES PATERSON.

(Signed) HUGH ALLAN.
" A. S. D. THOMSON.

years he has occasionally drawn on the Company for money. He has done so perhaps on four occasions altogether. None of these drafts was ever honoured. I remember a draft by him on the Company for £4000 in favour of someone in India being presented to us. I have not a note of the date. It may have been early in 1917. It was presented twice. Payment was refused each time. I think this was the last of his drafts.

16 All which I depone as truth.

(Signed) JAMES PATERSON.

(Signed) HUGH ALLAN.
" A. S. D. THOMSON.

Compeared also HUGH ALLAN, residing at Glencaple, Strathaven. Lanarkshire, who being sworn and examined depones:

I am a director of William Collins Sons & Company Limited, Publishers, Glasgow. I have been connected with the business in different capacities for 45 years. I have no personal acquaintance with Charles Glen Collins. I know of his existence and know who he is. I corroborate in full the evidence of James Pater-
son.

All which I depone as truth.

(Signed) HUGH ALLAN.

(Signed) A. S. D. THOMSON.

I/

I certify that the evidence contained in the foregoing Depositions was taken before me. Charles Glen Collins was not present.

(Signed)

A. S. D. THOMSON,
Sheriff Substitute of Lanarkshire.

"Certified at the Scottish Office "Whitehall for verification of the signature of Alexander Stuart Duff Thomson, Sheriff Substitute of Lanarkshire, Glasgow.

(Signed)

[SEAL.]

JOHN LAMB,
Assistant Under Secretary for Scotland.

Scottish Office,

Whitehall, 10th June, 1918.

In forwarding the annexed papers, to be used in support of an application for the surrender from the United States of Charles Glen Collins, charged with the crime of obtaining goods by false pretenses (called in the Indian Penal Code "Cheating") committed by him in Bombay, I hereby certify that to the best of my knowledge and belief, the signature "A. S. D. Thomson" annexed to the foregoing depositions is the signature of Alexander Stuart Duff Thomson, Sheriff Substitute of Lanarkshire, Glasgow, having authority to receive the same and I further certify that such *such* documents so signed by a Sheriff Substitute having magisterial jurisdiction in the place where the same were taken, and authenticated by a Minister of State, and sealed with his official Seal, would be received in evidence for similar purposes by the tribunals of India.

(Signed)

[SEAL.]

J. W. HOLDERNESS,
Under Secretary of State for India.

India Office, Whitehall, S. W., 18th June, 1918.

Certified at the foreign office for legalization of the foregoing signatures, "John Lamb" and "J. W. Holderness."

London, June 19, 1918.

(Signed)

CYRE A. CROWE,
Assistant Under Secretary of Foreign Affairs.

18 Certified at the American Embassy in London for the authentication of the signature of Sir Cyre A. Crowe, H. C. M. G., K. C. B., Assistant Under Secretary of State for Foreign Affairs, and of the Seal of His Britannic Majesty's Foreign Office, this twenty-second day of June, One thousand nine hundred and eighteen.

(Signed)

[SEAL.]

SHELDON LEAVITT CROSBY,
Secretary of Embassy.

Embassy of the United States of America,

London, August 9, 1918.

I, Sheldon Leavitt Crosby, Secretary of Embassy of the United States in London, hereby certify that the annexed papers, being a

copy of the evidence of John Richard Campbell Howie and Edward Curtice, a certificate signed by the Chief Magistrate of the Police Courts of the Metropolis and a certificate signed by the Under Secretary of State for India, proposed to be used upon an application for the extradition from the United States of Charles Glen Collins, charged with the crime of obtaining goods by false pretenses alleged to have been committed in Bombay, India, are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of India, as required by the Act of Congress of August 3, 1882.

In witness whereof I hereunto sign my name and cause the seal of the Embassy to be affixed this ninth day of August in the Year of our Lord One Thousand Nine Hundred and Eighteen.

(Signed) **SHELDON LEAVITT CROSBY,**
Secretary of Embassy of the United States.

20 METROPOLITAN POLICE DISTRICT, *To wit:*

Bow Street Police Court.

The Evidence of John Richard Campbell Howie and Edward Currie taken before me, the undersigned, Sir John Dickinson, Knight, Chief Magistrate of the Police Courts of the Metropolis, sitting at the Bow Street Police Court, in the County of London, and within the Metropolitan Police District, pursuant to an order under the hand and seal of one of Her Majesty's Principal Secretaries of State, for the purpose of a certain criminal matter pending in a certain Foreign Court, to wit, at New York, within the jurisdiction of the United States of America, under the provisions of the 5th section of the Extradition Act, 1873, on this 31st day of May, in the Year of our Lord One Thousand Nine Hundred and Eighteen, in the absence of the person charged.

And the Deponent JOHN RICHARD CAMPBELL HOWIE, on oath saith as follows:

I am a bank official of the International Banking Corporation 36
Bishopsgate, E. C. 2.

I produce a draft for £1700, purporting to be drawn by Charles G. Collins on 26th February 1917, payable on demand, drawn upon E. Curtice & Co., 8 Clarges Street, London, W. Our banking Company received it from our branch at Bombay for collection. This was the only draft that we had, drawn upon E. Curtice and Co. of 8 Clarges Street.

21 The draft was presented by our bankers—the National and Provincial Bank of England—it was not paid. I saw Mr. Curtice—who is here to-day as a witness—at our bank, about the end of March or the beginning of April 1917, with reference to the draft: The draft was not met.

We notified our Bombay office at once. Upon their instructions

the bill was presented again at the beginning of May 1917, and was not paid; and Mr. Curtice came to our bank and I saw him again. We notified our Bombay office again on the 8th May that the bill had been re-presented and that there were no funds to meet it.

I produce also a photograph of a draft dated 26th February 1917, drawn by Charles G. Collins, Lt. Col. on William Collins Sons & Co. Ltd. of Glasgow, for £4000. We received this draft from our Bombay office about the same time as the draft for £1700, for presentation, and we sent it to our agents, the British Linen Bank at Glasgow. We never received any money for it; the draft was returned to us through our agents with the note "No authority to draw," dated 17/4/17. We notified our Bombay office; we held the draft for a time and then returned it to our Bombay office.

• (Signed)

J. R. CAMPBELL HOWIE.

And the Deponent EDWARD CURTICE on oath saith as follows:

I live at 8 Clarges Street, W. 1. My wife is lessee of 8, Clarges Street, a house which is let out in suites, furnished and unfurnished. I do not carry on any business there at all. I do not carry on any agency business there or anywhere; I do not carry on any banking business anywhere. I am not a member of any firm or company. I do not know of any firm or company called E. Curtice and Company or E. Curtice & Sons, existing now or in the early months of 1917, nor for years and years. A good number of years ago, 22 20 or more, my father and I traded as publishers and printers and news agents in Catherine Street, Strand, under the style of Curtice and Company. The firm became Maclrae, Curtice & Co. Ltd., and afterwards the Hansard Union.

The photograph now shewn to me I recognize as that of Charles Glen Collins, whom I have known for some 10 or 12 years—prior to that I knew his father and uncle, and had business relations with the firm of William Collins Sons and Co. Ltd. of Glasgow, printers and publishers.

Defendant had no right or authority from me to draw upon me in February 1917 for £5000 or for any sum. He never advised me that he had done so. If he had written to me asking my authority to draw upon me for £5000 I should have had to refuse.

I received no communication whatever, and no telegraphic or cable request from him in February 1917 to pay a sum of £5000 to the International Banking Corporation.

Collins knew perfectly well that unless he provided the funds I should not meet any such draft for £5000 drawn by him. About the end of March and at the beginning of May 1917, a draft for £1700 was presented, and re-presented to me for payment through the International Banking Corporation; no funds had been provided for me to meet it, and I refused to pay it. I have had no communication whatever from Collins in regard to the drafts for £5000 and £1700.

About the beginning of 1917 I received a letter from Collins—I do not remember from where—in which he referred to some oil

property of his. He did not ask my advice; and I did not give him any advice; and did not reply to his letter.

(Signed)

EDWARD CURTICE.

23 I hereby certify that the foregoing evidence of John Richard Campbell Howie and Edward Curtice was taken and sworn before me at the Bow Street Police Court aforesaid on the 31st day of May, in the Year of our Lord One Thousand Nine Hundred and Eighteen pursuant to the 5th section of the Extradition Act, 1873, in the absence of the person charged.

(Signed)

[SEAL.]

JOHN DICKINSON,
*Chief Magistrate of the Police Courts
of the Metropolis.*

I hereby certify that the written, printed and type-written matter contained in the fore-going five sheets of paper is a correct copy of evidence taken by me in pursuance of an order of the Secretary of State for the purposes of a certain criminal matter pending in a certain foreign Court, to wit, at New York, in the United States of America.

Given under my hand and seal at Bow Street Police Court, in the Metropolitan Police District, this 28th day of July 1918.

(Signed)

JOHN DICKINSON, [SEAL.]
Chief Magistrate of the Police Courts of the Metropolis.

In forwarding the annexed papers, to be used in support of an application for the surrender from the United States of Charles Glen Collins charged with the crime of obtaining goods by false pretenses (called in the Indian Penal Code "Cheating")
24 comitted by him in Bombay, I hereby certify that to the best of my knowledge and belief the signature "John Dickinson" annexed to the foregoing depositions is the signature of Sir John Dickinson, Knight, Chief Magistrate of the Police Courts of the Metropolis of London, sitting at the Bow Street Police Court, having authority to receive the same, and I further certify that such documents so signed by a magistrate having jurisdiction in the place where the same were taken, and authenticated by a Minister of State, and sealed with his official seal, would be received in evidence for similar purposes by the tribunals of India.

(Signed)

J. W. HOLDERNESS, [SEAL.]
Under Secretary of State for India.

India Office, Whitehall, S. W., August 1, 1918.

Certified at the Foreign Office for Legalisation of the Foregoing signature, "J. W. Holderness."

London, August 6, 1918.

(Signed)

W. LANGLEY,
*Assistant Under Secretary
of State for Foreign Affairs.*

Certified at the American Embassy in London for the authentication of the signature of Sir Walter Langley K. C. M. G., C. B. Assistant Under Secretary of State for Foreign Affairs, and 25 of the Seal of His Britannic Majesty's Foreign Office, this ninth day of August, 1918.

(Signed) SHELDON LEAVITT CROSBY,
[SEAL.] *Secretary of Embassy.*

26 *Agreement of Counsel to Supplemental Record on Appeal.*

Filed April 22, 1919.

In the Supreme Court of the United States.

No. 977, October Term, 1918.

CHARLES GLEN COLLINS, Appellant,

vs.

FRANK M. MILLER, Appellee.

Application of Appellee, suggesting diminution of the record, and praying that the depositions of James Paterson and Hugh Allan, taken before A. S. D. Thomson, Sheriff Substitute of Lanarkshire, and the depositions of John Richard Campbell Howie and Edward Curtise, taken before Sir John Dickinson, Knight, Chief Magistrate of the Bow Street Police Court, London, and the documents annexed to the said last named depositions be made a part of the record herein:

Comes now the Appellee, Frank M. Miller, United States Marshal for the Eastern District of Louisiana, and respectfully suggests that, upon the trial of this case before the Honorable Rufus E. Foster, sitting as Extradition Commissioner, the following were offered in evidence, to-wit:

The depositions of James Paterson and Hugh Allan, taken before A. S. D. Thomson, Sheriff Substitute of Lanarkshire, and the depositions of John Richard Campbell Howie and Edward Curtise, taken before Sir John Dickinson, Knight, Chief Magistrate of the Bow Street Police Court, London, together with certain documents annexed to said last mentioned depositions, were offered on behalf of the British Consul-General at New Orleans, which said offers were 27 ruled out by said Honorable Rufus E. Foster, sitting as extradition commissioner, but to which ruling of Extradition Commissioner bills of exception were reserved; that, thereafter, Charles Glen Collins applied to the Honorable William I. Grubb, United States District Judge sitting at New Orleans, for the issuance of habeas corpus; that said writ was tried upon the entire record as made up on the extradition proceedings held before the Honorable Rufus E. Foster sitting as Extradition Commissioner, said proceed-

ings including the depositions and documents hereinabove mentioned.

Now comes Appellee, Frank M. Miller, United States Marshal, as aforesaid, who shows that Counsel representing said Charles Glen Collins, in making up his praepipe to the Clerk of the United States District Court for the Eastern District of Louisiana at New Orleans, omitted from said record the depositions and documents hereinabove mentioned.

Now your Appellee shows that said depositions and documents annexed are a proper part of the record, and should be now added thereto.

Wherefore, the consent of Counsel representing said Charles Glen Collins, which is hereto annexed, being considered, Appellee prays that, without the formal issuance of a writ of certiorari, a certified copy of said documents, together with the original documents annexed to said depositions be attached hereto, and when printed copies thereof are filed, be accepted and made a part of the records in this case, and as in duty bound, petitioner will ever pray.

(Signed)

ROBERT H. MARR,
For FRANK M. MILLER, *Appellee.*

28 I, J. Zach Spearing, of Counsel for Charles Glen Collins, consent that the depositions and documents hereinabove described shall, without the necessity of a formal application for a writ of certiorari, be made a part of the record, reserving, however, all rights which the said Charles Glen Collins may have in the premises, it being the sole purpose of this consent to dispense Appellee with the necessity of applying for a certiorari suggesting diminution of the record, and without agreeing that said documents are properly a part of the record.

(Signed)

J. ZACH SPEARING.

29 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

Clerk's Office.

I, Henry J. Carter, Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify that the foregoing 28 pages contain a true and correct transcript of the depositions of James Paterson and Hugh Allan, taken before A. S. D. Thomson, Sheriff Substitute of Lanarkshire, and the depositions of John Richard Campbell Howie and Edward Curtice, taken before Sir John Dickinson, Knight, Chief Magistrate of the Bow Street Police Court, London, originally filed in the case of "In the matter of Extradition proceedings versus Charles Glen Collins," No. 15,936, of the Docket of the U. S. District Court, East. Dist. of La. and filed also in case entitled "United States, Ex Rel., Charles Glen Collins versus Frank M. Miller, U. S. Marshal," No. 15,959 of the Docket of the U. S. Dis-

trict Court, Eastern District of Louisiana, except certain photographic exhibits and original draft attached to depositions of John Richard Campbell Howie and Edward Curtice taken at Bow Street Police Court on May 31, 1918, which said originals are omitted from this transcript; the said transcript being made in accordance with the written stipulation filed April 22, 1919, in said cause and copied at page 26, hereof.

Witness my hand, and the seal of the said Court, at the City of New Orleans, Louisiana, this 30th day of April, A. D. 1919.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER, *Clerk.*

30 [Endorsed:] File No. 27,063. Supreme Court U. S. October Term, 1918. Term No. 977. Charles Glen Collins, Appellant, vs. Frank M. Miller. Stipulation and addition to record. Filed May 15, 1919.

Office of the Supreme Court, U. S. C.

FILED

OCT 3 1919

JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States
OCTOBER TERM, 1919.

—
No. 350.
—

CHARLES GLEN COLLINS,

Appellant,

versus

FRANK M. MILLER, U. S. MARSHAL,

Appellee.

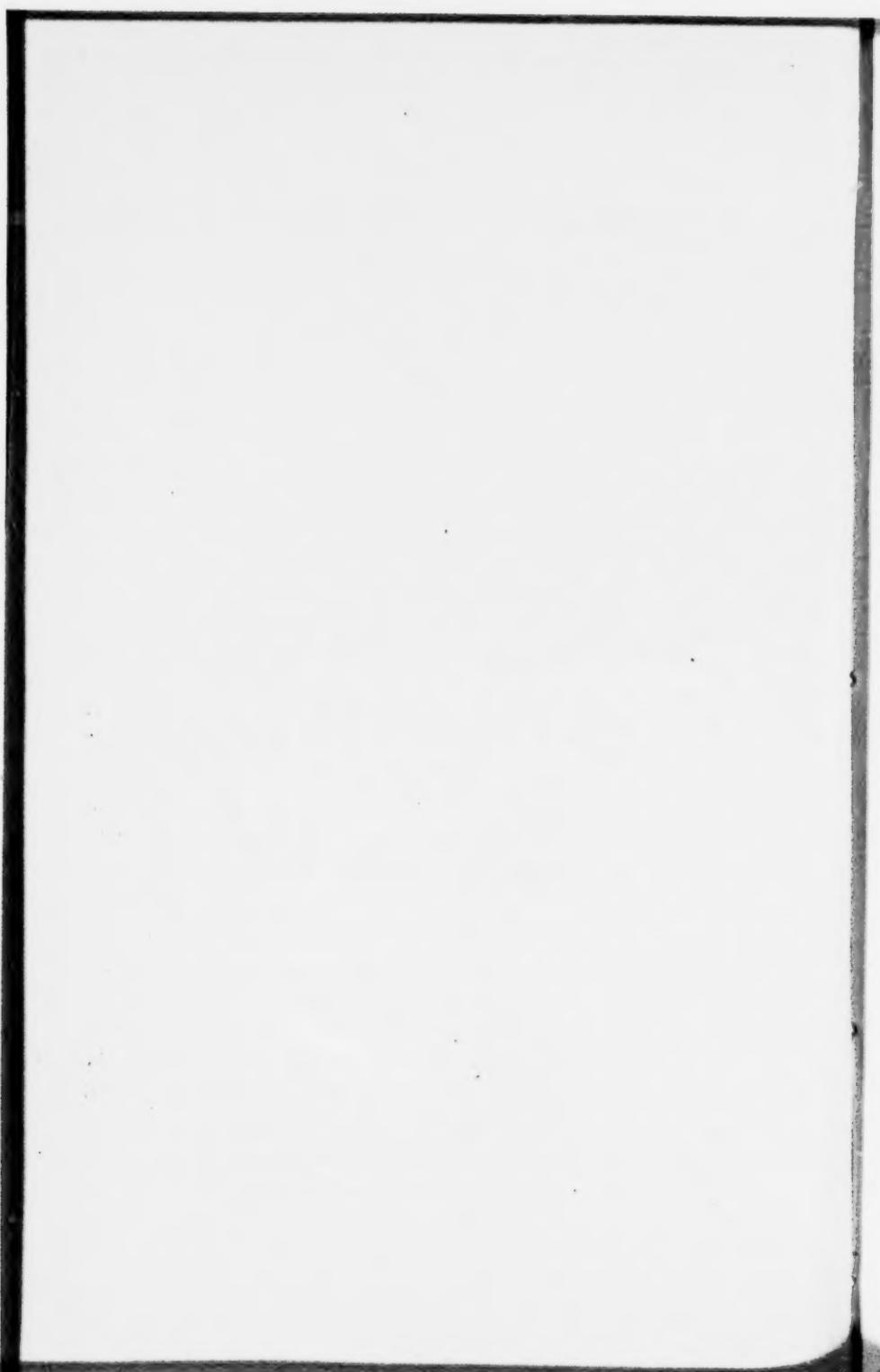
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MOTION TO ADVANCE.

DONALDSON CAFFERY,

Counsel for Appellee.

ROBERT H. MARR,
Of Counsel.

HAUSER PRINTING CO., "The Legal Printers," 720 Peydras St., N. O., La.



IN THE
Supreme Court of the United States
OCTOBER TERM, 1919.

No. 350.

CHARLES GLEN COLLINS,

Appellant,

versus

FRANK M. MILLER, U. S. MARSHAL,

Appellee.

MOTION TO ADVANCE.

Comes now Donaldson Caffery, of counsel for Frank M. Miller, United States Marshal, and for the British Consul-General at New Orleans, and suggesting to the Court that Charles Glen Collins, having been committed to custody to be held for extradition to British India for trial on charges pending against him in the Chief Residency Magistrate's Court at Bombay, India, applied for writs of habeas corpus, which said writs being refused, said Charles Glen Collins has prosecuted this appeal.

And, further suggesting to the Court that this is a criminal case and one of international extradition; that the offenses for which the extradition of said Collins is sought are alleged to have been committed in British India in February, 1917; that the original affidavits herein were filed on November 5, 1917, ever since which said date the

officer designated by the Government of British India to receive and take back to India said Collins has been in New Orleans, awaiting the termination of these extradition proceedings; that notwithstanding the earnest efforts of the British Consul-General at New Orleans to bring about speedy hearings, said hearings were not actually held until October and November, 1918; that on October 30, 1918, said Collins was committed to await extradition under two of said affidavits, and on November 21, 1918, was committed to await extradition under the third of said affidavits; that on January 9, 1919, said Collins applied for *habeas corpus*, which said writ was on February 21, 1919, denied; that the appeal herein was filed in this Honorable Court, April 11, 1919; that the proper administration of criminal justice and the carrying out of the treaty obligations existing between the United States and Great Britain require as speedy a termination as practicable of the issues herein involved.

Moves the Court that this case be now advanced on the docket.

DONALDSON CAFFERY,
Counsel for Appellee.

ROBERT H. MARR,
Of Counsel.

Mr. J. Zach Spearing,
Attorney for Charles Glen Collins.

My Dear Sir:—You will hereby please take notice that on the sixth (6th) day of October, nineteen hundred and nineteen (1919), at the court room of the Supreme Court

of the United States in the City of Washington, District of Columbia, and in accordance with Rule 6 of said Honorable Court, Frank M. Miller, United States Marshal for the Eastern District of Louisiana, and the British Consul-General at New Orleans, will submit for the consideration of the said Court the annexed and foregoing motion to advance said appeal.

Said motion will be submitted upon all of the grounds set forth herein; will be based upon the record, papers and files in said case.

Dated at New Orleans, Louisiana, this 10th day of September, 1919.

DONALDSON CAFFERY.

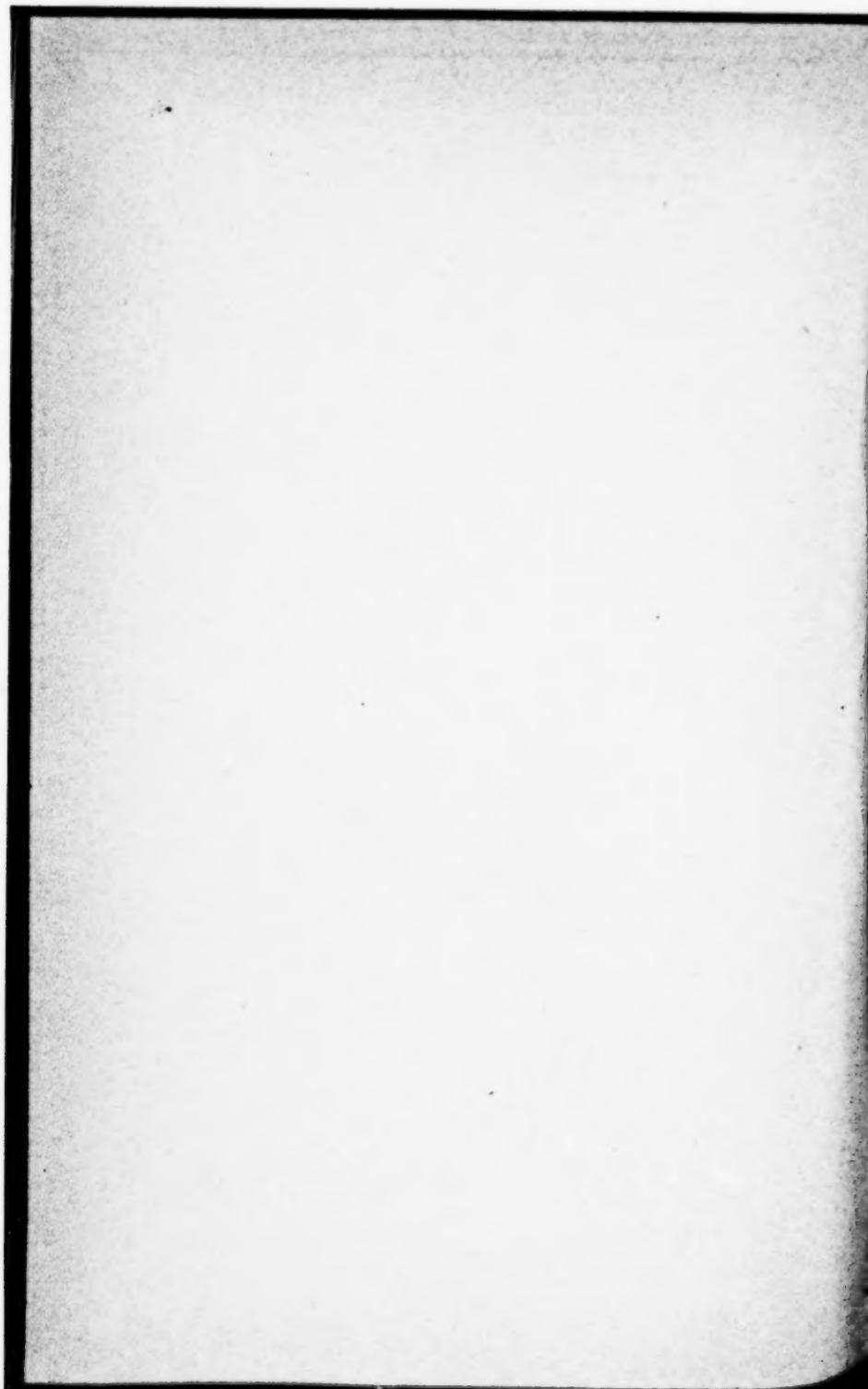
I hereby acknowledge service upon me of motion to advance, as well as copy of said motion.

J. ZACH SPEARING,
Attorney for Charles Glen Collins.

September 10, 1919.

I hereby certify that copy of within motion and of notice were served personally upon J. Zach Spearing, Esq., counsel for appellant, September 10, 1919.

DONALDSON CAFFERY.



MAY 17 1919

JAMES D. MAHER,
OLNEY.

No. 8

350

IN THE
Supreme Court of the United States

*Appeal From the District Court of the United States for
the Eastern District of Louisiana.*

CHARLES GLEN COLLINS,

Appellant,

versus

FRANK M. MILLER, U. S. MARSHAL,

Appellee.

BRIEF ON MOTION TO DISMISS APPEAL.

DONALDSON CAFFERY,

*Of Counsel for F. M. Miller, U. S. Marshal, Appellee,
and Tom F. Carlisle, British Consul General.*

May 1, 1919.

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No. 977.

IN THE
Supreme Court of the United States

*Appeal From the District Court of the United States for
the Eastern District of Louisiana.*

CHARLES GLEN COLLINS,

Appellant,

versus

FRANK M. MILLER, U. S. MARSHAL,

Appellee.

BRIEF ON MOTION TO DISMISS APPEAL.

Three separate affidavits were filed by the British Consul General at New Orleans, charging that Charles Glen Collins was a fugitive from the justice of British India; that he had obtained by false pretenses from Pohoomul Brothers a pearl necklace of the value of seventy-five thousand rupees (£5,000); that he had obtained by false pre-

tenses from Geneshi Lall & Sons, jewelry of the value of two thousand pounds (£2,000), and that he had obtained by false pretenses from Mohamed Ali Raza a pearl button of the value of seventeen hundred pounds (£1,700). The false pretenses consisted mainly in the issuance of drafts without authority to draw, upon a firm falsely stated to be bankers, and by false representation of himself as a man of wealth.

The first two affidavits hereinabove mentioned were tried together, the third separately, but the Honorable Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana, sitting as Extradition Commissioner, consolidated all three affidavits into one case.

Upon the trial of the first two affidavits, Collins was sworn as a witness in his own behalf; but, after testifying that he was the man wanted, and had gotten the jewelry, the Judge refused to allow him to testify how the transactions came about, the purpose of this further testimony being to disprove the charge of obtaining by false pretenses. (Trans. pp. 60, 61.) Collins then offered a Mr. Smith as a witness, the purpose being to show that Collins had entered into certain oil transactions in the United States, out of which he expected to pay the jewelers (Trans. p. 64). This evidence was properly ruled out; it would not have been admissible even had the trial been on the merits. Under the third affidavit, Collins was examined at length, and gave in full his side of the controversy.

Habeas corpus was applied for, which was refused as to the case last mentioned; as to the first two affidavits hereinabove mentioned, he was ordered held under the original affidavits, and the cause was remanded to the Honorable Ru-

fus E. Foster, Judge, to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana. (Trans. p. 105.)

The recitals of the application for *habeas corpus*, and in the assignment of errors are practically the same (Trans. 110-113). These allegations are:

1st. That relator stands charged in Bombay with cheating under Section 420 of the Indian Penal Code, and that cheating is not an extraditable offense.

2nd. That he was denied the right of making a voluntary statement in his own behalf, and of adducing witnesses in his own behalf.

3rd. That there was submitted to the Extradition Commissioner no legal proof of relator's having committed any crime.

4th. That none of the depositions, papers, or exhibits offered in evidence was properly authenticated.

5th. That the transactions disclosed by the depositions are criminal, neither under the law of British India nor of Louisiana, but were merely commercial transactions.

6th. That, if criminal under the law of India, then, the offense is cheating and not extraditable.

7th. Variance in the documents forwarded from India, in that the charge made against Collins in India is cheating, while, in the authenticating certificates of the Secretary for the Indian Government, and of the Consul-General of the United States at Calcutta, the charges are stated as being that of obtaining valuable property by false pretenses; it is then

set out that the difference between cheating and obtaining by false pretenses is that cheating is a false representation of what is going to be, false pretenses a false representation of what is or has been.

1.

In each of the three cases it is certified by the Secretary to the Government of India in the Foreign Political Department that the accused "is charged with the crime of obtaining valuable property by false pretenses alleged to have been committed in Bombay." (Trans. pp. 14, 37, 78.) In two of the cases, the Chief Presidency Magistrate at Bombay, in his warrant of arrest, certified that "Lieutenant-Colonel Charles Glen Collins stands charged with the offense of obtaining property by false pretenses under Section 420 of the Indian Penal Code." (Trans. pp. 38, 78.)

One of these two affidavits says, "within the jurisdiction of my court;" the other (the one in which the *habeas corpus* was refused) uses the equivalent phrase, "at Bombay," hence, as to these two affidavits, the record disproves the verity of relator's complaint. As to the third affidavit, complaint rests upon the most fragile of foundations. It is true that the warrant for the arrest of relator, issued before the depositions were taken, recites (Trans. p. 15) "Whereas one Lieutenant-Colonel Charles Glen Collins stands charged with the offense of cheating at Bombay, under Section 420 of the Indian Civil Code, in respect of a pearl necklace valued at Rs. 75,000." But, after hearing the evidence, the Chief Presidency Magistrate certifies "that a *prima facie* case of an offense at Bombay of cheating under Section 420 of the Indian Penal Code in respect of obtaining by false pretenses a pearl necklace valued at Rs. 75,000, has been es-

tablished against the accused, Lieutenant-Colonel Charles Glen Collins." (Trans. p. 32.) There is not even a seeming difference between the warrant of arrest and the finding of the Magistrate in India. Cheating is a generic term and applies to any fraudulent device by means of which one is induced to part with the ownership of his property, hence, it necessarily includes the obtaining by false pretenses. The Magistrate certifies that the particular sort of cheating with which relator stands charged is obtaining by false pretenses. The request for extradition corresponds with the finding of the Magistrate. It is not the name which the offense bears in different countries that entitles to extradition, but the criminality of the acts complained of. If the same state of facts is criminal in India and in Louisiana, no matter what name that state of facts may bear in India, the accused is extraditable. This must be so, otherwise extradition treaties between countries speaking different languages would be impossible. In other words, the right to extradite is based upon what the accused is charged with doing, not upon the name that that charge bears. In the case of *Roth*, 15 Fed. 506, the documentary proofs were in German and described proceedings in Switzerland as for "Unterschlagung," which may mean embezzlement ("soustraction") or only abuse of trust ("d'abus de confiance"), the latter not being a treaty offense, and the certificate to the authentication of the document stated in French that they are for a proceeding "d'abus de confiance," it was held that the error in the certificate, if it was such, was immaterial, and that it was to be presumed that the requisition for the accused was for a trial upon the treaty offense. The Circuit Court of Appeals, in *United States vs. Green*, 154 Fed. 401 (affirmed 207 U. S. 596) say:

"While the extradition of a prisoner from a foreign country for trial in the United States and the indictment on which he is tried must be for the same criminal cause, it does not follow that a crime must have the same name in both countries, but it is sufficient if the acts in question are criminal in both countries, and are within the terms of the treaty on which the extradition is granted."

In *Wright vs. Henckle*, 190 U. S. 858, the Court say:

"The general principle of International Law is that in all cases of extradition *the act done* on account of which extradition is demanded must be considered as a crime by both parties." (Italics ours.)

To the same effect is *Kelly vs. Griffin*, 241 U. S. 6.

2.

In two of the cases Collins as a witness in his own behalf was not allowed to present his defense, the Judge very properly holding that the merits could not be gone into in extradition proceedings, that matters of defense could be urged only in the trial court in India. As to these two affidavits, relator's complaint is utterly frivolous since, on *habeas corpus*, these two affidavits were remanded, with instructions to the Extradition Commissioner to hear relator.

The other evidence offered by relator would have been inadmissible even upon a trial upon the merits, the purpose of the offer being, not to show what representations relator made when he induced the jewelers to part with their wares, but it was to show that relator expected to make some money out of some sort of an oil speculation, and that, if he had made that money, he could have paid the Indian jewelers.

In the third case in which the writ was refused, relator was sworn and examined as a witness in his own behalf, cross-examined and re-examined, and by his own evidence stands convicted (Trans. pp. 89-97). He admits that he gave in payment for a pearl button valued at seventeen hundred pounds (£1,700), a draft on C. Curtice & Company, No. 8 Clarges street, London, a drawee on whom he had no right to draw, in whose hands he had no funds, and whom he had not notified of any intention to draw, and on whom he had already given one jeweler a draft for five thousand pounds (£5,000), and another jeweler a draft for two thousand pounds (£2,000) (Trans. p. 93). Thus, within a short space of time relator drew drafts aggregating eighty-seven hundred pounds (£8,700) on a drawee upon whom he knew he had no right to draw, and who, he admits, was not even a banker. (Trans. p. 92.)

During the course of the examination, depositions taken in Glasgow and London were offered in behalf of the British Consul. This evidence was rejected and a bill of exceptions to the ruling of the Court reserved. (Trans. p. 59.) The ruling was erroneous, the depositions being admissible under Section 5 of Act of August 3, 1882, Chapter 378. This evidence (brought up by supplemental transcript) showed that Collins was without authority to draw, which he admitted; that there is no such firm as E. Curtice & Company; that E. Curtice lives at No. 8 Clarges street, but that is a residence, not a place of business of anyone, and that E. Curtice is not a banker, which is admitted by Collins. It was also established that Collins is not a stockholder, and has no interest in William Collins & Son, Limited, but independently of this evidence, which has been brought up by appellee, the United States Marshal, Collins' own testimony shows guilt.

3.

The evidence admitted by the Commissioner is shown to be legal by the certificate annexed thereto, and makes out a *prima facie* case of obtaining by false pretenses,—with relator's testimony an absolute case.

4.

There is no merit whatsoever in the objection to the certificates. Each certificate is signed by the Consul General of the United States at Calcutta, and is in the exact language of the Act of Congress of August 3, 1882 (Trans. pp. 14, 37, 77). Besides it was held in *McNamara vs. Henckle*, 226 U. S. 526, that the objection that the depositions used in an extradition case were not properly certified cannot be inquired into on *habeas corpus*. Nor is there any merit in the contention that the acts complained of are not criminal, either in India or in Louisiana; nor in the further contention that, if criminal in India, they are not criminal in Louisiana, it being set up in the the objection that the offenses charged is cheating and not obtaining by false pretenses. The obtaining of property by means of a draft which the drawer knows he is without right to draw is obtaining by false pretenses, and the fact that the draft is to be paid at a future time does not affect the criminality—every draft and every check is payable at a future date—It was a false pretense that relator made when he pretended that he had the right to draw.

5 and 6.

On *habeas corpus* in extradition proceedings, the only question that a trial or an appellate court has power to ask

is, has the relator been deprived of some legal right; the question of the weight or sufficiency of the evidence cannot be gone into.

This proposition has been laid down so frequently that it is hardly necessary to quote authorities. Your Honors, however, are referred to the following cases:

McDonald's case, Fed. Cases 8772; *Ex parte Zentner*, 188 Fed. 348; *Ex parte Glucksman*, 189 Fed. 1016; *Bryant vs. United States*, 161 U. S. 104; *Orneles vs. Ruiz*, 161 U. S. 503; *Bingham vs. Bradley*, 241 U. S. 516; *McNamara vs. Henckle*, 226 U. S. 521.

These same authorities, and many more that might be quoted, hold that extradition proceedings are in the nature of a preliminary examination. The functions of the Extradition Commissioner are limited to ascertaining whether a *prima facie* case of guilt has or has not been made out. He does not pass upon the question of guilt or innocence. Whatever matters accused may have to urge in defense can only be set up in the courts of the demanding country. The *Charlton case*, 229 U. S. 447, supported by a long line of authorities, puts this proposition outside of the domain of discussion.

It is quite evident that this appeal is wholly frivolous, and that it can have no other purpose than delay. The offenses are all charged to have been committed in the latter part of January, and early in February, 1917; extradition was applied for in the latter part of 1917; *habeas corpus* was asked for in November, 1918, and several months ago was denied and an appeal taken.

The appeal is frivolous as to the two affidavits remanded to the Commissioner, because, whatever error there might have been in refusing to allow relator to testify on the merits has been cured by the remanding.

As to the affidavit on which the writ was refused, the appeal is frivolous because, in that case, relator gave in full his side of the controversy, and convicted himself of the offense of obtaining by false pretenses.

In consideration of the above, it is, therefore, earnestly prayed that this appeal be now dismissed.

DONALDSON CAFFERY,

*Of Counsel for F. M. Miller, U. S. Marshal, Appellee,
and Tom F. Carlisle, British Consul General.*

May 1, 1919.

IN THE
Supreme Court of the United States.

No. 977.

CHARLES GLEN COLLINS,
Appellant,

vs.

FRANK M. MILLER, U. S. MARSHAL FOR THE EASTERN
DISTRICT OF LOUISIANA,

**Brief on Behalf of the Appellant in Opposition
Appellee's Motion to Dismiss.**

The questions raised on this appeal involve, among others, the construction of the extradition treaties between the United States and Great Britain; the interpretation of Section 420 of the Indian Penal Code; the construction of statutes of the United States as to proceedings in extradition cases; the admissibility of evidence and competency of witnesses; and what constitutes evidence of criminality under the laws of the State of Louisiana.

The mere statement of these questions which are admittedly involved, would seem to answer the contention of the appellee that the motion to dismiss should be granted on the ground that the appeal is frivolous. That these questions are in-

volved will appear from the printed record, page 3, section 10, sub-sections a to k, Assignment of Errors, record, pages 110 to 113.

Extradition treaties between the United States and Great Britain are the following:

Treaty of August 9, 1842, Article X; 8 U. S. Statutes at Large, p. 576;

Treaty of July 12, 1889, as amended and proclaimed March 25, 1890; 26 U. S. Statutes at Large, p. 1508;

Treaty of December 13, 1900; 32 U. S. Statutes at Large, p. 1864.

The appellant stands charged with having committed the offense of cheating as that offense is defined and prescribed by Section 420 of the Indian Penal Code. This section of the Indian Penal law is as follows:

"Section 420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

1 Stokes, Anglo-Indian Codes, p. 254.

This offense or crime is nowhere mentioned in either of the three treaties between this Nation and Great Britain.

The nearest approach to it appears in the Treaty of December 13th, 1900, but there is a very material difference between the crime therein named and that, the commission of which the accused stands charged.

The Treaty of December 13th, 1900, includes among extraditable crimes that of:

"11. Obtaining of money, valuable securities or other property by false pretenses."

32 U. S. Stat. at Large, p. 1864.

The difference between this crime and that of cheating under Section 420 of the Indian Penal Code is that proof of false representations of a state of things *past* or *present* is essential to a conviction under one, while all that is required under the other is proof of a promise of *future performance* which the promisor *did not intend* to perform.

An illustration of the American doctrine of false pretense is afforded by the case of State of Louisiana vs. Clement Colly, 39 La. An. 841, where it was held that in a prosecution for obtaining money or property by false pretenses, the indictment must contain averments that the accused made false representations of a state of things past or present, and that the indictment will not be good if the alleged false representations refer to the future only.

And again, in the same opinion the Supreme Court of Louisiana said:

"A promise is not a pretense within the meaning of the Louisiana Statute, even when the party making the same *does not intend to keep it.*"

The Louisiana doctrine is not peculiar in this respect, nor is it limited, in its application, to that State.

It is the same doctrine that is now and has always been applied throughout the Nation.

Wharton, Am. Crim. Law, secs. 2085, 2087,
2096, 2112;

2 Bishop on Crim. Law, secs. 397, 400, 401.

Under the Indian Penal Code, however, it has been held:

"A. intentionally deceives Z. into a belief that A. means to repay any money that Z. may lend to him, and thereby dishonestly induces Z. to lend him money, A. not intending to repay it. A. *cheats.*"

1 Stokes Anglo-Indian Codes, p. 252 (illustration f).

And again:

"A. intentionally deceives Z. into a belief that A. means to deliver to Z. a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z. to advance money upon the faith of such delivery. A. *cheats*; but if A., at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

1 Stokes, Anglo-Indian Codes, p. 252 (illustration g.).

Also that:

"A. receives from B. a Government promissory note, promising to return certain jewels pledged to him, but not intending to do so, and subsequently claims to retain the note for another debt alleged to be due to him by B. A. *cheats*."

3 N. W. p. 17;

1 Stokes, Anglo-Indian Codes, p. 253.

Hence false statement as to a *future fact*, or even a present intention not to do that which one says he will do, may constitute a deception within the meaning of the Indian Offense of Cheating, and consequently one punishable by as much as seven years at hard labor and a fine. This led an Indian Court to observe that:

"The obvious inconveniences resulting from such a doctrine can only be avoided by cleaving to the rule that mere breach of contract is not even *prima facie* evidence of an original fraudulent intention."

Mayne, Commentaries on the Indian Penal Code, 350;

9 Bom. H. C. 448;

See foot note—Stokes, Anglo-Indian Codes, p. 252.

Article X of our Treaty with Great Britain of August 9th, 1842, which is still in force, provides that no person shall be

surrendered by either Nation except upon such evidence of criminality:

"as according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed."

See—

Pettit vs. Walshe, 194 U. S. 205.

The Treaty provisions, as well as the law of the place where the accused was arrested were both ignored by the Judge, who, acting as commissioner, has held the appellant for the action of the State Department.

Section 1010 of the Revised Statutes of the State of Louisiana of 1870, which section is still in force in that State, provides that if the offense is not punishable by death it will be the duty of the judge or committing magistrate

"to examine on oath, such witnesses as may appear against him (the accused) and reduce their depositions to writing. *It shall also be his duty to receive the voluntary declaration of the person accused*, and the answers which, without promise or threat, he shall make to the questions which the examining judge or magistrate shall put to him, and cause them to be reduced to writing and signed by the prisoner in his presence and that of two witnesses, or if he cannot sign, to mention that circumstance, and to certify the declaration with his signature and that of two witnesses, which declaration thus certified and signed shall be evidence before the grand and petty jury."

In State vs. Stenart, 34 La. An. 1037, it was held that the accused is entitled upon preliminary examination before the judge or committing magistrate, to have other witnesses than himself examined in his own behalf.

Section 5270 of the Revised Statutes provides that in extradition cases the accused is to be brought before the judge or commissioner "to the end that the evidence of criminality

may be heard and considered." That "evidence of criminality" means both for the prosecution and for the accused, is made further evident by the Act of Congress of August 3rd, 1882, Chapter 378, section 3, 22 Stats. 215, which provides:

"On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged, setting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means and is actually not able to pay the fees of such witnesses, the judge or commissioner before whom such claim for extradition is heard may order that such witnesses be subpoenaed, and in such cases the cost incurred by the process and the fees of witnesses shall be paid in the same manner that similar fees are paid in the case of witnesses subpoenaed on behalf of the United States."

This Act, taken in connection with the Louisiana law, certainly makes it clear that the accused is entitled not only to testify himself as to the question of criminality, but is also entitled to produce witnesses to testify in his behalf.

In re Ferez, 7 Blatchford, 34;

In re Kelly, 25 Fed. Rep. 268;

In re Charleston, 34 Fed. Rep. 531.

That these rights were disregarded by the Court below is clearly shown from the record, pages 61 to 66 and 98, and by the certificate of the Court on page 104 of the Record.

There is no contention on the part of the appellee that in two of the cases any opportunity at all was given to the appellant to testify on his own behalf or to offer other evidence in his own behalf. In the third case the contention of the appellee that the appellant by his own testimony conclusively shows his guilt, is not borne out by the record, even the incomplete record wherein the judge below excluded all the material part

of the testimony of the appellant on the question of criminality.

The testimony, we respectfully submit, shows that the transactions forming the basis for the charges were all simply commercial transactions in which, through business misfortune, the appellant was unable to carry out his contract of purchase. The appellant offered himself as a witness to further establish this fact and also offered other evidence in support of the same contention. This evidence was excluded by the Court and this, we submit, constitutes error.

It is equally clear that incompetent and irrelevant testimony against the appellant was admitted in evidence over the objection of the appellant. (Record, pp. 55, 56, 58, 88, 89 and 104.)

Whether we are right in this contention or not, it is certainly obvious that the questions involved are not frivolous questions and that the appellant is entitled to be heard in support of the contentions he has raised on this appeal.

Respectfully submitted,

J. ZACH. SPEARING,
J. KEMP BARTLETT,
Attorneys for Appellant.

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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1919.

No. 350.

CHARLES GLEN COLLINS,

Appellant,

VERSUS

FRANK M. MILLER, U. S. MARSHAL FOR THE EASTERN
DISTRICT OF LOUISIANA.

Supplemental Brief on Behalf of the Appellant

STATEMENT OF THE CASE.

This is an appeal from a judgment of the United States District Court for the Eastern District of Louisiana filed on the 21st day of February, 1919, upon the petition of the appellant for a writ of habeas corpus. (Record, p. 1.)

The appellant, Lieutenant-Colonel Charles G. Collins, was held in the custody of Frank H. Miller, United States Marshal for the Eastern District of Louisiana, at the City of New Orleans, in the State of Louisiana, under an order of the Honorable Rufus E. Foster, United States District Court

for the Eastern District of Louisiana, awaiting the action of the Honorable Secretary of State of the United States of America, as to whether the accused should be surrendered for extradition to Bombay, India, to answer three separate charges of cheating under Section 420 of the Penal Code of India preferred against him by certain merchants doing business in India.

The first of these complaints is based upon an information which is set forth on page 16 of the Record and charges the appellant with the offense of cheating in connection with the purchase on February 7, 1919, of a pearl necklace, of the value of about 75,000 rupees, from the firm of Pohoomull Brothers, doing business at Appollo Bunde, Bombay, India.

The second complaint is based upon an information which is set forth on page 39 of the Record and charges the appellant with the offense of cheating in connection with the purchase on February 19th, 1917, of certain jewels valued at 67,500 rupees from the firm of Ganeshi Lall & Sons doing business at Agra, Simla and Calcutta, India.

The third complaint is based upon a deposition which is set forth on pages 78 to 80 of the Record, and charges the appellant with the offense of cheating in connection with the purchase of a pearl button on February 26, 1917, of the value of 1700 pounds sterling from Mahomed Alli Zaimal Ali Raza of Sitaram Gully, India.

The judgment appealed from will be found on page 105 of the Record and is as follows:

JUDGMENT.

(Filed February 21st, 1919.)

*In the United States District Court for the Eastern District
of Louisiana.*

*In the Matter of the Application of Charles Glen Collins for
Writs of Habeas Corpus and Certiorari.*

As to the commitment of relator to await the action of the President of the United States on the application for the extradition of relator to answer the charge of obtaining property by false pretenses from Mahomed Alli Zaimel Ali Raza, relator's application for habeas corpus is denied.

As to the commitment based on the charge of obtaining property by false pretenses from Pohoomull Brothers and on the charge of obtaining property by false pretenses from Ganeshi Lall & Sons, the writs of habeas corpus are granted, but relator is remanded to the House of Detention to await further proceedings in said last two named affidavits.

And it is further ordered that, as to the said two affidavits last mentioned this cause be and is hereby remanded to the Honorable Rufus E. Foster, Judge, to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana.

Given this 21st day of February, 1919.

(Signed)

W. L. GRUBB,
U. S. District Judge.

These complaints will be considered in the order in which they were filed.

CHARGE OF PONHOOMUL BROTHERS.

On the 22nd day of September, 1917, a certain Udharam Patarbagh (or Partabrai) filed in the Esplanade Police Court of Bombay an affidavit or information, charging Lieutenant Colonel Charles G. Collins with having committed "the offence of *cheating* under Section 420 of the Indian Penal Code" and prayed that he might be charged and dealt with according to law (Record, p. 16). The matter was adjourned from time to time by the magistrate in order that the complainant might produce witnesses to enable the magistrate to act under the Fugitive Offenders Act, until the 11th day of October, 1917, on which last mentioned day the depositions of the said Udharam Partabrai, and of Lokumul Sahijram and J. D. Sherston Baker were received. Copies of said depositions are identified as depositions of witnesses Nos. I, II and III, respectively (Record, pp. 19 to 24). On the same day a warrant for the arrest of the accused was issued by the Chief Presidency Magistrate of Bombay to a certain Arthur Fuller of the Bombay Police Force, commanding him to arrest the accused "charged with the offence of *cheating* at Bombay under Section 420, Indian Penal Code, in respect of a pearl necklace" and to produce him at the Chief Presidency Magistrate's Court at Bombay. By virtue of this warrant the accused was arrested during the month of November, 1917, at New Orleans, La., where he was temporarily located engaged in looking after certain oil property interests which will be hereinafter more particularly referred to. His arrest was accomplished upon the request of the British Consul and the accused was held without bail for the arrival of the documents from India, but was after the lapse of about forty days, released upon bail (upon the ground that further confinement would prove detrimental to his health) to await the pleasure of the British authorities as to the fixing of the date of the hearing upon their application for his extradition.

Attached to the above mentioned information, depositions of witnesses Nos. I, II and III and warrant, is a copy of an application of the said Patarbagh (or Partabrai) bearing date the 19th day of October, 1917, praying leave to record further evidence and that a fresh warrant may be issued so as to comply with the provisions of the Extradition Treaty between Great Britain and the United States of America (Record, p. 24). The additional "*evidence*" thus introduced consists of a deposition of A. Fuller taken on the 19th day of October, 1917, or *eight days after* the date of the only warrant that was ever issued upon the complaint of Pohoomul Brothers or their manager; Exhibits A, B, C, D, E, F, G and H were filed on the same day. (Record, pp. 26 to 31.)

The information (there is no indictment) (Record, p. 16) alleges that the complainant is the Bombay manager of Pohoomul Brothers, a firm of jewelers, silk merchants and curio dealers; that on or about December 20th, 1916, the accused in company with Mrs. Olsen and Mrs. Elsie Muntz, to the latter of whom he was engaged to be married, visited Pohoomul Brothers' shop and made some small purchases; that on December 23rd, 1916, the accused purchased of them a silk ring for Rs 650 and paid for it by a cheque on Thomas Cook and Son of Bombay, which cheque was paid upon presentation; that a few days later the accused and Mrs. Muntz called and asked to be shown some pearl necklaces; that subsequently the complainant took some necklaces to the bungalow where the ladies were residing and that Mrs. Muntz selected a necklace of the value of Rs 72,250, but it was not then purchased; that on January 30th, 1917, the accused bought a pearl ring for Rs 1,000 for which he paid; that on February 2nd, 1917, the accused purchased the said necklace for Rs 75,000, some of the pearls having been changed since it was first shown; that he promised to pay for the same; that he gave the complainant a draft for £5,000 on E. Curtice & Company of London in payment; that complainant's firm was not then

satisfied with the draft and did not accept it or give delivery of the necklace; that on February 3rd, 1917, the accused in company with a member of the complainant's firm, had an interview with a Mr. Brent, the manager of the International Bank, and that Mr. Brent suggested that the accused should wire E. Curtice & Company to pay £5,000 to the International Bank's London office; that "subsequently," the date not being stated, accused *informed* the complainant's firm that he had cabled E. Curtice & Company "and that the amount of the draft would be duly paid to the International Bank by E. Curtice & Co." That on February 7th, 1917, Mrs. Muntz called at the complainant's shop and that the necklace was delivered to her; that on February 10th, 1917, the complainant asked the accused whether he would pay complainant Rs 15,000 on account of the said draft and that accused then gave complainant's firm a cheque for Rs 15,000 on Thos. Cook & Son, which cheque was duly honored; that on February 22nd, 1917, complainant's firm received a letter from the International Bank stating that their London office had advised that they had received no money from E. Curtice & Co.; that on February 23rd, 1917, the accused was interviewed and stated that he had instructed his London agents to sell some shares, but they had advised against it so he had suggested a loan instead; that on February 25th, 1917, the accused stated that it would take a month to sell his shares and he proposed to give them a draft for the unpaid balance of £4,000 on the firm of William Collins Sons & Co., of which, it is alleged, he stated he was a partner and that his brother, who was another partner, would not refuse a draft from him; that *on this representation* complainant's firm *returned to the accused the draft on E. Curtice & Co.* and accepted a draft drawn by the accused on Wm. Collins Sons & Co., and that complainant's firm *agreed with the accused that they would not present the draft until the 15th of April, 1917*; that on February 27th, 1917, the accused with

Mrs. Olsen and Mrs. Muntz left India for Colombo and thence traveled eastward to America; that the draft on Wm. Collins & Co. has not been paid.

The information concludes with the statement that the accused has committed the *offence of cheating* under Section 420 of the Indian Penal Code.

There is no allegation of a *false pretense prior* to the delivery of the necklace to the petitioner on February 7th, 1917. The representations made by the petitioner on February 23rd and 25th, 1917, even if untrue, could not have influenced the delivery of the necklace on February 7th, 1917. The only charge made is that the petitioner deceived the complainant, and dishonestly induced the complainant to deliver the necklace "upon a promise to pay for the same, which promise the accused had no intention of performing" (Record, p. 18). This might, perhaps, constitute the offense of "cheating" under the Indian Penal Code, but, as will be more fully shown later, does not constitute obtaining property by false pretenses under the Treaty with Great Britain of December 13th, 1900, 32 U. S. Stat. at Large, p. 1864.

In Partabrai's deposition (Deposition of Witness No. I, Record, p. 19) he says, referring to the conversation with accused about the draft on E. Curtice & Co.; "*Accused assured us that * * * the amount will be paid by E. Curtice & Co. to the Manager of the International Bank, London.*" He also states that on February 10th, 1917, or three days after the necklace was delivered to Mrs. Muntz, the accused paid him by check on Thos. Cook & Sons, which check was paid, Rs 15,000, or about \$5,000, on account, and sixteen days after that gave him a draft for £4,000 on Wm. Collins Sons & Co. upon the express condition, however, that this draft should not be presented for payment until April 15th, 1917. The balance of this witness' deposition consists of hear-say statements made to him by his solicitors and by other persons who are not named, but who are described by him as

"reliable sources" of information. He shows that he knows nothing as to the truth or falsehood of the allegations found in this portion of his deposition, but says he has no reason to disbelieve them and that he accuses Col. Collins of having "cheated" his firm.

This affidavit also completely fails to make any charge of false pretenses made by the petitioner *prior* to February 7th, 1917, which induced him to deliver the goods. Affiant's statement is:

"Accused assured us that he had sent a telegram as arranged and that the amount *will be paid* by E. Curteiss & Co., to the Manager International Bank, London. *Trusting to these assurances*, we gave the accused the necklace" (Record, p. 20). * * * I say the accused has cheated us. If he had not given the *assurance* I have spoken of we would not have given the necklace to him." (Record, p. 21.)

There is no evidence in the Record that tends even to prove that the petitioner did not send the telegram as stated, and his promise that the draft would be paid, as will be more fully shown later, even if not intended to be fulfilled, would not constitute the transaction the obtaining of property by false pretenses.

The next witness was Mr. Lokumul Sahijram, one of the partners of Pooomul Brothers (Deposition of Witness No. II, Record, p. 22). This witness makes a very significant admission. He testifies that on the day after the date of the purchase of the necklace the accused told a man by the name of Tejumull in witness' presence to carry a cablegram for him to the cable office; that witness read the cablegram; that it was addressed to St. Louis, saying "Cable 2500 dollars more available if needed"; that this cablegram was sent and that it impressed Pooomul Brothers with the fact that accused was a rich man "*and that they could safely trust him.*"

The alleged false representations referred to by this witness as to the accused being a member of the firm of Wm. Collins Sons & Co., and owning oil fields in Mexico are shown to have been made, if at all, after the delivery of the necklace. The affidavit at most only states that the petitioner "assured us" the draft would be paid, and they "believed" him (Record, p. 23).

One of the errors of law committed by the Judge, who acting as a commissioner, has held Col. Collins for the action of the Honorable, the Secretary of State, in this matter (to be more fully referred to hereinafter) is that although Mr. William H. Smith, a resident of the City of St. Louis, Mo., was present in Court at New Orleans, La., at the time of the hearing; although the Judge had adjourned the hearing for several days in order to enable Mr. Smith to reach New Orleans, nevertheless he would not permit either Mr. Smith, Col. Collins or Mrs. Muntz, now Mrs. Collins, who was also present in Court, to testify concerning this cablegram, or in fact, as to any other matter or thing in connection with the case after Col. Collins had admitted that he was the person named in the documents from India and that he was in India during the winter of 1916-1917. Mr. Smith was ready to testify that he had received the cablegram; that the amount named in it was \$25,000, not \$2,500, and that the sum of \$25,000 was actually remitted to him, or rather to his brother for him, at St. Louis at that time by Col. Collins from Bombay and was used to purchase certain oil properties near Houston, Texas, for Col. Collins and Mrs. Olsen, which properties Mr. Smith had been employed by Col. Collins to purchase, and that other large sums were paid to him by Col. Collins in connection with the same transaction, at or about the same time. Col. Collins and Mrs. Muntz offered to give similar testimony, as well as other testimony which would have conclusively shown the transaction with Poloomull Brothers to have been nothing more than a commercial one where the vendor extends credit to the vendee for a portion of the purchase price, all of which was excluded.

Returning to the deposition of witness No. II, it is sufficient to point out that it is nowhere in it, or in any of the documents, asserted that the cablegram that made the jewelers believe they could safely extend credit to the accused was not everything it purported to be and the same can also be said concerning the other alleged false tokens, unless we are to accept the unsworn and hearsay statements of complainant's solicitors, bankers and detectives as establishing, in a Court of Law in a matter involving the liberty of the accused, facts which by the law of the State of Louisiana can only be established by the sworn statement of witnesses who have personal knowledge of the matters about which they testify.

This witness also testified, as did his manager (Partabrai), that with reference to the draft on E. Curtice & Co. the accused said "*that £5,000 will be paid*" (Record, p. 23), not that he had authority to draw, or that he then had funds in the hands of E. Curtice & Co. sufficient to cover the draft. As to the other draft which took the place of the first one that was never used or presented, this witness also agrees with his manager in testifying that what Col. Collins said was that the firm of Wm. Collins Sons & Co. "*will not refuse it*," not that he had the funds there to meet it at that time or authority to draw. In fact the statements in both depositions to the effect that the jewelers agreed not to present this draft until April 15th, 1917, negatives any inference that there could have been any representation to the effect that the draft was then good or that there was money then there to pay it.

The next witness was Mr. J. D. Shertson Baker, solicitor for Pohoomull Brothers (Deposition of Witness No. III, Record, p. 24). He merely stated that he had caused inquiry to be made about the accused and that he is of opinion that a *prima facie* case of *cheating* under Section 420 of the Indian Penal Code has been made out by the depositions. This witness was allowed to file as Exhibit F with his deposition a letter dated August 14th, 1917, signed by solicitors residing in London in which they make certain quoted ex-

tracts from a letter which they say they have received from solicitors at Glasgow, whose names are not even given. These Glasgow solicitors do not pretend to have any personal knowledge as to the truth or falsity of the gossip which they relate, and yet this letter to complainant's Bombay solicitors from their correspondents at London quoting extracts from an alleged letter from unnamed persons, said to be solicitors at Glasgow, in which they state what certain other unnamed persons have told them about Col. Collins is treated as if it were evidence and is even dignified by being bound in with and attached to the three depositions hereinbefore mentioned, all of which are certified by the Consul-General of the United States at Calcutta. From the remarks made by the Judge acting as commissioner, who has held Col. Collins for the action of the Secretary of State, it appears that he must necessarily have given this three distilled extract of hearsay the weight of actual evidence. This phase of the case will be touched upon in another portion of this brief.

The only other deposition in support of this charge is one of A. Fuller, inspector, taken on October 19th, 1917 (Record, p. 26), or *eight days after the issue of the warrant*. Even if it could be considered, it will be seen at a glance that it has no probative value and the same is true of the letter of another official referred to in it and filed as Exhibit H.

CHARGE OF GANESH LALL & COMPANY.

On the 1st day of December, 1917, a certain Birjmohan Lall (or Lalla) filed in the Court of the Chief Presidency Magistrate at Bombay, a declaration or information (there was no indictment), charging Lieutenant Colonel Charles G. Collins with the offense of *cheating* under Section 420 of the Indian Penal Code and prayed that he might be judged and dealt with according to law (Record, p. 39). On the same day a warrant for the arrest of the accused was issued by the Chief Presidency Magistrate of Bombay to the aforesaid

Arthur Fuller, of the Bombay police force, commanding him to arrest the accused and produce him at the Chief Presidency Magistrate's Court at Bombay. The documents in support of this charge (Record, pp. 41 and 42) were offered in evidence before Judge Foster acting as a commissioner, at New Orleans, Louisiana, on the 30th day of October, 1918, at the time when the documents supporting the charge made by Pohoomull Brothers were also offered.

Both sets of documents were objected to by counsel appearing on behalf of Col. Collins and were received over his objection.

Attached to the information in the matter of Ganeshi Lall & Company are the depositions of Birjmohanlal Lalla (or Birjmohan Lall), Dattatraya Ramschandra and Arthur Fuller.

The information (there is no indictment) (Record, pp. 42 to 44) alleges that the complainants carry on the business of jewelers and curio dealers at Agra, Simla and Calcutta; that the accused was at the time of the filing of the information under arrest in the United States on an extradition warrant issued by the Chief Presidency Magistrate of Bombay on the complaint of cheating filed by Udharan Patarbagh of Pohoomul Brothers; that about the middle of February, 1917, the accused with Mrs. Olga Olsen and Mrs. Elsie Muntz were staying with Her Highness, the Maharani Kapurthala and the accused purchased from your complainants' firm certain jewelry of the value of Rs 67,500; that the purchase was completed on the 19th of February, 1917, when the accused gave the complainants his cheque for £500 on Thomas Cook & Son of Bombay, and his promissory note, payable sixty days after date for £2,000 and that he also promised to give the complainants through the complainants' agents, Thomas Cook & Son of Bombay, a draft on E. Curtice & Company of London for £2,000 payable sixty days after date; that the equivalent in pounds sterling of the purchase price of the

jewels was £4,500; that the accused represented that he was a partner in the firm of Wm. Collins Sons & Company of Glasgow, and a colonel in the Howe Battalion of the Royal Naval Division, then on leave of absence; that he assured complainants that a cheque for £500, his sixty-day promissory note for £2,000 and the sixty day draft for £2,000 would all be duly paid; that the said check for £500 was duly honored; that the accused delivered to Thomas Cook & Son as complainants' agents, the aforesaid sixty day draft for £2,000; that the accused left India on or about the 27th day of February, 1917; that neither the said promissory note nor the said draft has been paid.

While this complainant asserts that the accused made certain representations, he does not of his own knowledge declare them to be false, nor does he claim that these representations induced him to part with the jewels. On the contrary he declares:

“He (accused) *assured* your complainant that the said cheque for £500; the said promissory note for £2,000, and the said draft for £2,000, would be duly paid.”
(Record, pp. 39-40, sec. 6.)

“Your complainant's firm believed the *assurance* of the accused, and were induced thereby to deliver to him the above mentioned jewels.” (Record, p. 40, sec. 7.)

And he further declares:

“Your complainant submits that the accused deceived your complainant and thereby dishonestly induced your complainant's firm to deliver the said jewels to him upon a promise to pay for the same which promise the accused had no intention of performing.” (Record, p. 40, sec. 15.)

And he concludes the complaint:

“Your complainant therefore submits that the accused has committed the offense of cheating.” (Record, p. 40.)

The further statement by Brijmohan Lall, at the top of page 41 of the Record, that:

"Accused told us that he had money at Messrs. Clarges and Company," is not shown to be false, and even if it were, it is unimportant on this issue, as the affiant states: "*He (accused) had all the goods at this time,*" so that the alleged statements had not induced them to part with the goods.

The remaining portion of the information consists of statements alleged to have been made to the complainants by their solicitors, bankers and detectives. These matters are not alleged as facts or even upon information and belief, nor is the document which is characterized as the information of Brijmohan Lall sworn to.

In Birjmohanlal Lalla's (Brijmohan Lall's) statement (Record, p. 42) he says that he first met the accused in Agra in January, 1917; that with him was Sir Edwin John of Agra and Commander Holmes, also Mrs. Trapman, Mrs. Olsen and Mrs. Muntz; that subsequently complainant called on the accused at Bombay and showed him jewelry, but no agreement was reached as to price; that on February 15th complainant wrote the accused a letter which is filed as Exhibit No. 2 (Record, p. 45) and which is a request that the accused shall examine the wares which the complainant was offering to sell him and a request that complainant be afforded an opportunity to show the accused an extremely fine ruby of uncommon size; that an appointment was arranged and that complainant and his father went to the Cecil Hotel at Delhi with a box of jewels and showed them to the accused, Mrs. Olson and Mrs. Muntz; that some of the jewelry was selected and the price agreed on was £2,500; that accused gave his check on Thomas Cook & Sons of Bombay for Rs 7,500, leaving a balance of £2,000 to be paid by promissory note in the afternoon because they had no "hundi" papers then; that

accused stated that he was a partner of Collins Sons & Company and promised to wire to his bank from Bombay "*to pay the drafts on the due date*"; that in the afternoon complainant and his father went to accused's room with the stamped "hundi" papers and accused wrote his promissory note for £2,000 payable sixty days after date and made the same payable at E. Curtice & Co., 8 Clarges Street, London; that after this transaction had been finished accused again looked at jewels which complainants offered and decided to buy one large emerald for £2,000; that he did not pay at the time because they had no "hundi" paper; that accused said he would give a draft to complainant's agents, Thomas Cook & Sons in Bombay; that before leaving Delhi on the morning of February 20th, 1917, accused gave complainants a letter which is filed as Exhibit No. 7 (Record, p. 47), in which he states that he has received the large emerald that he bought of complainants for £2,000 and that he will give a sixty day draft on his agents in London through Thomas Cook & Son in Bombay on Thursday, February 22nd, 1917; that accused subsequently complied with this promise by giving Thomas Cook & Sons the said draft; that the original of said draft is in London and that neither the draft nor the promissory note has been paid.

Attached to this deposition are certain exhibits which were duly objected to at the hearing at New Orleans, but received over the accused's objection. One of these exhibits (No. 13—Record, p. 49), is a copy of an unsworn letter purporting to have been written by one Henry Morser of London on September 28th, 1917, to Genashi Lall of Agra. Mr. Morser does not pretend to have personal knowledge of the matters set forth in his letter. On the contrary, his letter clearly shows that he knows nothing whatever concerning them. Even an unsworn report of a detective, a certain William B. Kemp, employed by Mr. Morser and bearing date September 13, 1917, was received in evidence at the hearing at New Orleans over Col. Collins' objection. This report, as might

be expected, is a mass of misinformation, all of which in addition to being hearsay of the most palpable character, is also immaterial and irrelevant.

Nowhere in this affidavit of Brijmohanlal (Record, pp. 42 and 43) does he state that the accused made false representations that induced him to part with the jewels. He says:

"If I had known that accused was an undischarged bankrupt, and that Curtice and Company are boarding-house keepers, I would not have given accused the jewelry. I would not have accepted the draft in Bombay." (Record, p. 43.)

In Dattatraya Ramschandra's deposition (Record, p. 43) the statement is made that he is a clerk in Thomas Cook & Sons, and that the sixty-day draft referred to in the foregoing deposition had not been paid.

The only other deposition upon this complaint is that of Arthur Fuller, who merely gives a description of Colonel Collins (Record, p. 44).

Here again, as in the case of Pohoornul Brothers, if the irrelevant, immaterial and hearsay statements contained in communications from solicitors and detectives who do not pretend to have any knowledge concerning the subject-matter of their reports, are disregarded, as they certainly should be, and even if the unsworn declaration of the only witness who claims any knowledge of the facts is accepted as a true statement of the transaction, then the irresistible conclusion must be that the transaction with Ganeshi Lall & Co. was nothing more than a commercial one, where the vendor extends credit to the vendee for a portion of the purchase price; in fact, it is inconceivable that, even if the unsworn, hearsay and immaterial statements of solicitors and detectives are accepted as legally established evidence, and given the full weight that it is possible to claim for them, these transactions can be distorted into anything resembling either the statutory crime of "*cheating*" under the Indian Penal Code, or any crime known to the laws of the State of Louisiana.

CHARGE OF MAHOMED ALLI ZAIMAL ALI RAZA.

On the first day of December, 1917, a certain Mahomed Alli Zaimal Ali Raza filed in the Court of the Chief Presidency Magistrate of Bombay his deposition (in this case there was neither an information nor an indictment) (Record, p. 79), in which he charged Col. Collins with having committed the offense of "cheating" under Section 420 of the Indian Penal Code, and to support said charge, stated that a certain Mr. Dady gave him certain information in January, 1917, in consequence of which he called on Col. Collins and offered to sell him some pearls; that he thinks "*there was some conversation about giving credit at the first interview*"; that after that he called again on Col. Collins, and that Mr. Dady acted as interpreter because Raza does not speak English; that he, Raza, "*understood that Col. Colling was a big man and very wealthy and a partner of Collins & Son*"; that Col. Collins gave witness a diary saying it was the diary of "*their office*"; that he said he had shares worth thousands of pounds; that Col. Collins took Mr. Dady aside and spoke about payment; that witness thought Mr. Dady "*was a big man also*"; that witness agreed to give the pearls on credit; that Col. Collins liked one of the pearls and said he would come back and purchase it after he had visited his Rajah friends; that on February 26th, 1917, witness went to see Col. Collins again and sold him the pearl for £1,700; that Col. Collins asked witness "*to give that for credit*"; that Col. Collins gave witness a draft for the pearl; that witness "*promised not to present it for seventy days until the 5th of May*"; that the draft was drawn on C. Curtice & Co., of London; that witness believed accused's representations that he was a partner in Wm. Collins & Son; and that the check has not been paid.

The most that can be said for this deposition is that the affiant believed the statement that Mr. Dady made to him, not under oath, as to what the accused had said to Mr. Dady.

As bearing on the question of false pretenses on the part of the accused, this statement is absolutely only hearsay.

Nor does the complainant charge that these alleged misrepresentations induced him to part with the pearl stud. His statement is:

"If I had known accused was an undischarged bankrupt I would not have accepted the cheque."

"If I had known C. Curtice and Company was a boarding-house and not a Bank I would not have accepted the cheque." (Record, p. 80.)

On the same day a deposition of Kailkirkroo Dady was filed (Record, p. 80), in which he stated that he learned that Col. Collins wanted to buy some pearls, and got a letter of introduction to him and called to see him about Feb. 1st, 1917; that witness knew a party who had a very large stock of pearls and the next day he took this party to see Col. Collins, who introduced them to Mrs. Olsen, and that Mrs. Olsen selected a string of pearls out of a large mass shown to her; that Mrs. Olsen wanted the pearls made up into a necklace; that accused broached the subject of credit, and that witness said he would ask the complainant and let him know; that the subject of credit was mentioned to the complainant in the motor on the way back; that complainant asked the witness to make inquiries and let him know whether he was a desirable person to whom to give credit; *that witness consulted a Mr. Furdijji and got certain information*; that Col. Collins liked a button pearl shown to him by complainant and subsequently bought it for £1,700; that Col. Collins gave witness two diaries, "one for complainant and one to myself"; that accused wrote in the diaries; that he said William Collins & Son was his firm; that he had a considerable number of shares, and that he was on six months' leave; that accused gave a demand draft asking complainant to present it two months later.

Here the witness clearly shows that in giving information to the complainant he was not acting alone on the representa-

tions of the accused, but that, at the request of the complainant, he made an entirely independent investigation of his own, and obtained information from Mr. Fuldiuji. This completely negatives the vague suggestion that credit was given on statements made by the accused. Neither this witness nor, as shown above, the complainant, asserts that the goods were parted with because of false pretenses on the part of the accused.

In this case there was also filed the same day a deposition of Birjmohanlal Lalla (or Birjmohan Lall) (Record, p. 81), one of the other complainants, in which he stated that he had correspondence with friends in London regarding accused and had inquiries made, and he filed as exhibits copies of the same letters from Harry Morser and the detective, William B. Kemp, that are also filed as exhibits in support of the charge made by the said Birjmohanlal Lalla (or Lall) and to which unsworn, hearsay and irrelevant communications reference has already been made.

In this case the acts which the committing magistrate, Judge Foster, has held to be *prima facie* established are that:

"the defendant purchased the pearl stud, or was instrumental in its purchase, for £1700, and that he gave in payment of it, a check or draft on a firm in London with whom he had no funds deposited, and against whom he was not specially authorized to draw the check." (Record, p. 98.)

And he ruled:

"This makes out a *prima facie* case of obtaining goods by false pretenses, whether he subsequently intended to pay for the goods in some other way or not, and the matter is one that should come before the Indian Courts for trial on the merits. Therefore, I will hold him for requisition from the Secretary of State." (Record, p. 98.)

It will be noted that this action is not based on a ruling that there was a *prima facie* case established of false pre-

tenses on the part of Colonel Collins in respect to his wealth, army standing, membership in the firm of Collins & Company, etc., which induced the complainant to part with the pearl stud. All of that is eliminated by the specific statement by the Court that he based his action upon the giving of a draft without special authority against a party with whom the drawer had no funds *at the time*, although the complainant admits he had promised not to present this draft for 70 days (Record, p. 80).

This, we most earnestly insist, does not constitute the offense of "obtaining of money, valuable securities or other property by false pretenses," under the Treaty with Great Britain, 32 U. S. Stat. at Large, p. 1864, upon which alone the accused could be extradited.

TREATY REFERENCES.

Extradition treaties between the United States and Great Britain are the following:

Treaty of August 9, 1842, Article X; 8 U. S. Statutes at Large, p. 576;

Treaty of July 12, 1889, as amended and proclaimed March 25, 1890; 26 U. S. Statutes at Large, p. 1508;

Treaty of December 13, 1900; 32 U. S. Statutes at Large, p. 1864.

ARGUMENT.

NO EXTRADITABLE OFFENSE CHARGED.

Colonel Collins stands charged with having committed the offense of cheating as that offense is defined and prescribed by Section 420 of the Indian Penal Code. This section of the Indian Penal Law is as follows:

"Section 420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

1 Stokes Anglo-Indian Codes, p. 254.

This offense or crime is nowhere mentioned in either of the three treaties between this Nation and Great Britain.

The nearest approach to it appears in the Treaty of December 13th, 1900, but there is a very material difference between the crime therein named and that, with the commission of which the accused stands charged.

The Treaty of December 13th, 1900, includes among extraditable crimes that of:

"11. Obtaining of money, valuable securities or other property by false pretenses."

32 U. S. Stat. at Large, p. 1864.

The difference between this crime and that of cheating under Section 420 of the Indian Penal Code is that proof of false representations of a state of things *past or present* is essential to a conviction under one, while all that is required under the other is proof of a promise of *future performance* which the promisor *did not intend* to perform.

An illustration of the American doctrine of false pretense is afforded by the case of State of Louisiana vs. Clement Colly, 39 La. An. 841, where it was held that in a prosecution for obtaining money or property by false pretenses, the indictment must contain averments that the accused made false representations of a state of things past or present, and that the indictment will not be good if the alleged false representations refer to the future only.

And again, in the same opinion the Supreme Court of Louisiana said:

"A promise is not a pretense within the meaning of the Louisiana Statute, even when the party making the same *does not intend to keep it.*"

The Louisiana doctrine is not peculiar in this respect, nor is it limited, in its application, to that State.

It is the same doctrine that is now and has always been applied throughout the Nation.

Wharton, Am. Crim. Law, secs. 2085, 2087,
2096, 2112;

2 Bishop on Crim. Law, secs. 397, 400, 401.

Under the Indian Penal Code, however, it has been held:

"A. intentionally deceives Z. into a belief that A. means to repay any money that Z. may lend to him, and thereby dishonestly induces Z. to lend him money, A. not intending to repay it. A. *cheats.*"

1 Stokes Anglo-Indian Codes, p. 252 (illustration f.).

And again:

"A. intentionally deceives Z. into a belief that A. means to deliver to Z. a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z. to advance money upon the faith of such delivery. A. *cheats*; but if A., at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract."

1 Stokes Anglo-Indian Codes, p. 252 (illustration g.).

Also that:

"A. receives from B. a Government promissory note, promising to return certain jewels pledged to him, but not intending to do so, and subsequently claims to re-

tain the note for another debt alleged to be due to him by B. A. *cheats.*"

3 N. W. P. 17;

1 Stokes Anglo-Indian Codes, p. 253.

Hence false statement as to a *future fact*, or even a present intention not to do that which one says he will do, may constitute a deception within the meaning of the Indian Offense of Cheating, and consequently one punishable by as much as seven years at hard labor and a fine. This led an Indian Court to observe that:

"The obvious inconveniences resulting from such a doctrine can only be avoided by cleaving to the rule that mere breach of contract is not even *prima facie* evidence of an original fraudulent intention."

Mayne Commentaries on the Indian Penal Code,
350; 9 Bom. H. C. 448;

See foot note—Stokes Anglo-Indian Codes, p.
252.

The gist of the Indian offense of cheating is, as has been seen, a dishonest intention not to perform a promise of future performance, which promise has been relied upon by the promisee, whereas the gist of the American crime of obtaining property by false representations, is a false statement concerning a past or existing fact.

The elements that constitute the offense of cheating in India do not constitute any crime at all in America. It is not every dishonest act that can be said to be a criminal act. The extradition treaties have to do with certain crimes of the more reprehensible or dangerous character, and in the case of our treaty with Great Britain these crimes are limited to thirteen in number. It has never before been suggested that a man who does not pay his debt when it is due and whose offense is of a no more reprehensible or dangerous character than this, must be surrendered to the justice of an Alien Nation to stand trial at a place where unsworn and hearsay letters of attorneys and detectives in the employ of

the creditors seem to be given the weight of legal evidence, and where the law punishes with fearful and shocking severity a mere failure to perform a promise of future payment.

Article X of our Treaty with Great Britain of August 9th, 1842, which is still in force, provides that no person shall be surrendered by either Nation except upon such evidence of criminality:

"as, according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed."

See—

Pettit vs. Walshe, 194 U. S. 205.

The Treaty provisions, as well as the law of the place where the accused was arrested were both ignored by the Judge, who, acting as commissioner, has held Col. Collins for the action of the State Department.

The following extracts from the record of the hearing at New Orleans will be sufficient to establish this proposition:

"(The Court) : Do you think that any testimony in defense is relevant, or anything of that sort?

(Mr. Spearing) : Why certainly, if I can prove he didn't make any false pretenses.

(The Court) : It doesn't make the slightest difference if he did or did not. It is a question for the Court in India.

(Mr. Spearing) : I submit, if I prove as a matter of fact, there was no false pretense—

(The Court) : I have nothing to do with that whatever. The question of identity and sufficiency of these depositions is the only thing before me. * * * The only question here is the question as to the identity of the accused and the question whether or not he was in India at the time this alleged offense is supposed to have been committed. There are two things the defendant can show: either he is not the man wanted, or that he was not there at the time the offense is supposed to have been committed. Now he was there at the time and he admits he is the man.

(Mr. Spearing) : There is no doubt about that.

(The Court) : I will exclude everything else." (Record, pp. 60 and 61.)

The learned counsel for the respondent in Section 5 of his return to the writs herein, found on page 9 of the Record, attempts to distort this reply of Mr. Spearing, "There is no doubt about that," into an admission that Judge Foster had correctly stated the law. It is perfectly obvious from the whole Record that Mr. Spearing's remark applied only to the statement by Judge Foster, "Now, he was there at the time and he admits he is the man."

Again, after the letter of Little & Co., solicitors for Pohoomull Brothers, addressed to Mrs. Muntz, then engaged to marry Col. Collins, and now his wife, in which they take the position that their clients had delivered the pearl necklace to her upon her assumption of the debt for the unpaid balance of the purchase price and looked to her for payment thereof, had been offered in evidence together with an agreement signed by Pohoomull Brothers in which they undertook not to present Col. Collins' draft for about ninety days, the Judge remarked :

"(The Court) : I exclude that. Those are all along the line of showing it is a commercial transaction.

(Mr. Spearing) : Yes, purely and only a commercial transaction.

(The Court) : It was a commercial transaction ?

(Mr. Spearing) : Certainly it was.

(The Court) : I will make the same ruling. I will exclude it all.

(Mr. Spearing) : I also offer in evidence numerous and various letters and certificates, showing the military standing and title of the accused, before and after he was in India, but all before the charges were brought.

(The Court) : I think they are no more relevant than the others. I will exclude those." (Record, pp. 65 and 66.)

And again, after the hearsay character of the statements in the "Morser" and "Kemp" letters from London had been pointed out:

"(The Court): The certificate says it would be admissible.

(Mr. Spearing): But it would not be admissible here.

(The Court): All of this evidence was admitted before the Magistrate.

(Mr. Spearing): The Magistrate, yes, and the United States Consul has said that it is admissible there, but your Honor knows it would not be admissible here; your Honor would not admit that testimony here if the accused was charged with an offense here and it was attempted in this country to offer in evidence on any trial, civil or criminal, a letter from an attorney—

(The Court): Yes, but they may have different rules of practice if they want to." (Record, p. 68.)

And again:

"(Mr. Spearing): * * * Take that report of the private detective in London, hearsay of the worst kind. It may be that that is admissible in India. Your Honor knows, and I know, that it is not admissible here, though under your Honor's ruling, if the certificate is attached, it is admissible in this case.

(The Court): I say, it is a settled rule of this Court that, in extradition proceedings, no matters of defense are admissible; there are only two questions that can be inquired into, the question of identity and the question of whether the accused was present in the demanding state at the time the crime was supposed to have been committed." (Record, p. 69.)

That the Judge at New Orleans erroneously believed that the law of this land affords no protection to a man whose extradition is demanded, provided only the documents are in formal shape and the man is honest enough to admit his identity and that he was at the place where the crime is alleged to have been committed, and also that it matters not whether the alleged acts constitute a crime by the law of the

place where he is found and taken into custody, is shown by this quotation from the Record of the hearing:

“(The Court, Interrupting): Carries with it the suggestion that he is authorized to draw; whether it is a time draft or a sight draft, it doesn’t make the slightest difference. If this case was tried before a jury, and there was no evidence that he told this man from whom he bought the jewelry that this draft would be paid, and the draft came back with the notation ‘not authorized to draw,’ *and nothing else but that*, the jury would be warranted in finding him guilty.” (Record, p. 73. See also “Offer” and Ruling, Record, p. 98.)

This was gross error and it explains, we respectfully submit, why Col. Collins is now in jail for having committed no greater offense than failure to pay a debt contracted in perfect good faith; a debt that he could and would have paid when due if he had not lost all the money that he invested in the oil property hereinbefore mentioned, an investment that the jewelers knew of, because he told them of it as the cause of his inability to pay cash in full and of his having to ask for credit for a portion of the purchase price.

It was gross error for the Judge to hold and rule that the return unpaid of a time draft with the words written on the back thereof by some bank clerk or runner “not authorized to draw,” is equivalent in a criminal proceeding of legal evidence of want of authority to draw.

It was gross error for him to hold and rule that when there is no evidence of a false representation of a past or present fact, that the mere non-payment of a time draft *given after* the delivery of the goods would warrant a jury in this country in finding the drawer of the draft guilty of obtaining property by false pretense. The correct view, we submit, is that a time draft is nothing more than a promise that when it matures it will be paid, just as a term note is a promise to pay its amount at maturity.

To this view, however, the Judge expressed dissent and evidently based his conclusion upon this, his fundamental error, be it said with due respect, namely, that a time draft is a promise that it "will be paid by *the person on whom it is drawn.*" No authorities need be cited upon the proposition that a time draft is nothing more than an order to pay. If accepted by the drawee he becomes the primary debtor, and the drawer remains bound as his surety. If not accepted, the drawer remains primarily bound and if, as in these cases, the vendors of the jewels agreed to defer presentation of the drafts, as they all did, until the expiration of sixty days, seventy days and ninety days, respectively, then the drafts constituted nothing more than evidences of the drawer's promises to pay at the maturity of the drafts in case the drawees failed to do so. The drafts were in no way different, so far as constituting evidence of a false representation is concerned, than sixty, seventy and ninety days' notes would have been, and it is clear that a man cannot properly be surrendered for extradition to India because he fails to pay his promissory note.

Col. Collins is charged with an unextraditable offense. This point was made, but was overruled. The protection of the law of Louisiana was then invoked on his behalf, upon the ground, as has been herein shown, that the Treaty affords him such protection. This point was also denied him, the Judge holding: (a) That "they may have different rules of practice if they want to" in India (Record, p. 68); and (b) the crime of obtaining goods by false representations is committed by a man who makes no representation at all, but who merely gives his time draft for a portion of the purchase price; provided that draft is returned with the words "not authorized" written upon it. And this in the face of the law of Louisiana as laid down in *State vs. Colly, supra*, not to mention the universal doctrine in this Country to the effect that a false representation must relate to a past or present fact and cannot relate to a future event.

**VARIANCE BETWEEN THE INFORMATIONS FILED BEFORE THE
POLICE COURT OF BOMBAY AND THE CERTIFICATES OF
THE SECRETARY TO THE GOVERNMENT OF INDIA AND
THE CONSUL-GENERAL OF THE UNITED STATES OF AMER-
ICA AT CALCUTTA.**

In the Pohoolmull Brothers case and the Ganeshi Lall case the *Informations* filed state that the accused is charged with *Cheating* under Section 420 of the *Indian Penal Code*. This fact appears in the Informations and is also certified by the Chief Presidency Magistrate. In the Alli Raza case, while there is no formal *Information*, there is a certificate of the Chief Presidency Magistrate stating that the accused is charged with *Cheating* under the same section of the Indian Penal Code. The Information in the Pohoomull Brothers case is dated September 9th, 1917; that in the Ganeshi Lall case is without date, but is attached to a certificate dated December 1st, 1917. The three certificates of the Chief Presidency Magistrate stating the charges to be as above set forth are dated, respectively, October 19th, 1917 (Record, pp. 15 and 16), December 1st, 1917, and December 1st, 1917 (Record, pp. 38 and 39).

In the Pohoomull Brothers case the warrant was issued on October 11th, 1917, or eight days prior to the filing with the magistrate of the deposition of A. Fuller and the exhibits relied on, being Exhibits A, B, C, D, E, F, G and H. (Record, pp. 27 to 31.)

We respectfully submit that these exhibits cannot be properly treated as evidence of criminality justifying the surrender of the accused. They are not part of the evidence upon which the warrant was issued for the simple reason that they were not before the magistrate until eight days after it was issued. They should therefore be disregarded, but it is certain, judging from the remarks of the committing Judge which are in the Record, that they played an important part in influencing his action in holding Col. Collins.

In the other two cases the warrants were issued on December 1st, 1917.

No further steps in India were taken until April 2nd, 1918, when A. H. Grant, Secretary to the Government of India, in the Foreign and Political Department, made his certificate in each case to the effect that the local police magistrate had authority to issue the warrants. (Record, pp. 14 and 15.)

On April 8th, 1918, the Consul-General of the United States added his certificate to each set of documents. It will be noted that in these certificates of the Secretary and the Consul-General the charge against the accused is stated to be that of "obtaining valuable property by false pretences." (Record, p. 14.)

This irregularity and variance with respect to a most material matter, we respectfully submit, is fatal to the attempt to extradite the accused and should result in his discharge. The officials so certifying were located, as their certificates show, at Calcutta, while the police Court is at Bombay, and these officials could know nothing of the charges except as disclosed to them by the Informations themselves and the certificates of the magistrate before whom they were filed, nor do either of them state that they have any other knowledge of the matter than as so disclosed. In fact it is not within the province or authority of either of them to do more than to formally authenticate the documents submitted to them. They can neither add anything to nor take anything from those documents. If a man stands charged with larceny neither the Secretary nor the Consul-General, or both acting in concert, can by anything they may choose to write into their certificates of authentication, change the offense charged to murder. Whatever they say the offense charged is, it remains what it was before they added their certificates, and that it was and is *Cheating* in each of these cases cannot be denied.

A possible explanation can be suggested although it does not help the case for the prosecution, or cure the fatal error which appears on the face of the documents submitted by the demanding Nation.

It is this: When the Pohoomull Brothers' charge of cheating was made in Sept., 1917, Lieutenant-Colonel Collins was performing his duties as instructor at the Valcartier instruction camp in the Province of Quebec. Later, when the camp was closed for the winter, he came to the United States for the purpose of trying to recover something out of the wreck of his oil properties in Texas, a financial disaster which is the sole cause of the delay in the payment of his indebtedness to these Indian merchants, and one which was caused by the sale, without his knowledge, of the properties he had paid \$25,000 for a twelve months' option to purchase. The deposition of A. Fuller, above mentioned, states that he, Fuller, had learned after the proceedings had been commenced on the Pohoomull charge, of Col. Collins' removal from Quebec to the United States, and from Exhibit H (Record, p. 31) in the Pohoomull case it appears that the advice of a Mr. A. F. Kindersley, Under Secretary to Government, was sought and that the advice was that as Col. Collins was then in the United States, it would be necessary for Pohoomull Brothers to apply to the Magistrate "for a warrant of arrest against Collins, stating the offense *in terms of the treaty between the United States and Great Britain.*" Mr. Kindersley's letter is dated October 17th, 1917, and is addressed to the Commissioner of Police of Bombay. This was six days after the issuance of the warrant in the Pohoomull case, and although it was prior to the charges made and the warrants issued in the other cases, those charges and warrants are also upon the charge of cheating, probably because the evidence shows that credit was extended by the merchants and that the only offense was the failure to perform a promise of future payment.

If an unextraditable offense can be changed to one that is extraditable by the simple expedient of "*stating the offence in terms of the treaty,*" of what use, may we ask, is it to impose treaty limitations upon the right of Great Britain to demand the surrender of persons who are found in this country? Even criminals may find a safe asylum here unless their crimes are within the terms of an extradition treaty. Col. Collins is not a criminal. It is true that he is an unfortunate man, who has trusted too confidently the alluring inducements of an oil land promoter and who thereby has been unable until this time to pay the balances due merchants who willingly extended credit to him, and who are now using, or at least are attempting to use the police department of Bombay and the State Department of the United States as collection agencies.

EXCLUSION OF PRACTICALLY ALL EVIDENCES OFFERED ON BEHALF OF ACCUSED.

The record shows that Colonel Collins was examined at the New Orleans hearing on his own behalf, and that after he had testified that he was in India at the time these various transactions are alleged to have taken place, in company with his fiancee, Mrs. Muntz, and her friend Mrs. Olsen; that he subsequently married Mrs. Muntz; that Mrs. Olsen died on the Thursday preceding the day of the hearing, the Judge stopped the examination and inquired as to its purpose (Record, p. 60). The record contains the proffer made (Record, pp. 61 to 65) and the argument made by Mr. Spearing in support of his contention that it was the duty of the Judge to hear testimony in explanation of the matters and things referred to in the *ex parte* depositions taken at Bombay (which argument we adopt and refer to with much confidence (Record, pp. 66 to 75), and it also shows the conclusion of the Judge, which was, that he would exclude everything else that the accused might testify on his own behalf, or that other wit-

nesses might testify on his behalf, *except the admission that he was there at the time, and that he is the man described in the documents from India.*

At the first hearing the charges brought by Pohoomull Bros. and Ganeshi Lall & Company were before the Judge, and upon the second hearing the charges brought by Alli Raza were considered. It is true that upon the second hearing Colonel Collins was allowed to commence his testimony with reference only to a statement in Alli Raza's deposition, to the effect that "there was some conversation about giving credit at the first interview," but the Judge's final conclusion and ruling upon the hearing on the Alli Raza charge was the same as on the other charges, *i. e.*, that all testimony must be excluded except with relation to the identity of the accused and his presence in India at the time of the alleged transactions.

This is fully shown on page 98 of the Record, to which we ask particular attention.

We respectfully submit that this was gross and most injurious error.

In the matter of *In re Ferez*, 7th Blatchford, 34, and same case Fed. Cases, 4645, it was held in an extradition case that the accused has a right to be examined as a witness in his own behalf, if he is a competent witness, by the laws of the State in which he is found; and *In re Kelly*, 25 Fed. Rep. 268, it was held that he also has the right to examine witnesses in his own behalf.

The Kelly case arose under the Treaty of 1842 between this Country and Great Britain. Judge Nelson in that case cited Judge Blatchford's decision in *In re Ferez*, *supra*, with approval, and discharged the accused upon a writ of *habeas corpus*, saying that it was a fatal error for the accused to have been denied his right to call a witness on his own behalf.

This same point is considered in *In re Charleston*, 34 Fed. Rep. 531, which is another case arising under our Treaty

with Great Britain, and it was there held that the accused has the right to examine witnesses on his own behalf before the committing magistrate, and that the competency of evidence is to be determined by the law of the State in which the hearing is had, which is merely another way of stating that which the treaty itself so clearly provides, *i. e.*, that no person shall be surrendered by either of the two Nations concerned except upon evidence of criminality,

"as, according to the laws of the place where the fugitive, or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed."

Section 1010 of the Revised Statutes of the State of Louisiana of 1870, which section is still in force in that State, provides that if the offense is not punishable by death it will be the duty of the judge or committing magistrate

"to examine on oath, such witnesses as may appear against him (the accused) and reduce their depositions to writing. *It shall also be his duty to receive the voluntary declaration of the person accused*, and the answers which, without promise or threat, he shall make to the questions which the examining judge or magistrate shall put to him, and cause them to be reduced to writing and signed by the prisoner in his presence and that of two witnesses, or if he can not sign, to mention that circumstances and to certify the declaration with his signature and that of two witnesses, which declaration thus certified and signed shall be evidence before the grand and petit jury."

The learned counsel for the respondent falls into another error in paragraph 5 of the return to the writs herein. (Record, p. 9.)

He attempts to draw a distinction between an offer to testify, and an offer to make a voluntary statement. This error no doubt arose out of his interpretation of the words from Section 1010 of the Revised Statutes of Louisiana of 1870,

printed in italics above. He apparently overlooked the provisions of Act 45 of the General Assembly of Louisiana of 1886, which reads as follows:

“When any person charged with having committed any offense against the laws of this State, is brought before any justice of the peace or other committing magistrate in any parish of this State, or before any of the recorders of the City of New Orleans, it shall be the duty of said justice of the peace, committing magistrates and recorders of the City of New Orleans, to take in writing, the depositions and evidence of all material witnesses on behalf of the State, *and when so requested by the accused, the evidence of the material witnesses for the defense*, and also, in the discretion of said justice of the peace or recorder, to take their recognizance or bond in such sum as may be reasonable, conditioned for their appearance before the Court having jurisdiction of the offense, there to give evidence in the case and not to depart without leave of the Court; which depositions and recognizances or bonds shall be forthwith returned to the clerk's office of the Court having jurisdiction of the case.”

This law is referred to in *State ex rel District Attorney vs. Recorder*, 45 La. An. 309, in which the Court gives the history of the legislation in Louisiana on the subject, and on page 313 recognizes that this Act makes it the duty of the Committing Magistrate to receive and have reduced to writing the testimony of witnesses for the defense, and goes on to say:

“This act applies in all cases (when any person charged with ‘having committed *any* offense’) before committing magistrates, and is not irreconcilable with the duties devolving upon recorders in bailable cases. It is not limited to capital cases, but applies generally in all cases before ‘committing courts.’”

This case in substance holds that under the laws of Louisiana, an accused, no matter what the offense charged, is en-

titled, on the preliminary examination, to introduce evidence in his behalf—not only his own testimony, but the testimony of other witnesses—and such documents as may be material, so the Committing Magistrate may determine whether or not such a *prima facie* case has been made out on the preliminary hearing as will justify the committing of the accused for trial.

In *State vs. Steuart*, 34 La. An. 1037, it was held that the accused is entitled upon preliminary examination before the Judge or committing magistrate, to have other witnesses than himself examined in his own behalf.

In *Tinsley vs. Treat*, 205 U. S. 20, it was held that the regular practice which exists in some States, under which one indicted of crime is not entitled to a preliminary examination prior to the trial on the merits, has no application to proceedings under United States Revised Statutes, sec. 1014, for the arrest and removal to another Federal district for trial of a prisoner there charged with offense against the United States, and, in an opinion by Chief Justice Fuller, it is shown that the refusal to admit the evidence of the accused, to the effect that he could not have committed the crime of which he stood charged because he was not at the place where the alleged crime was committed at the time of its alleged commission, amounted to such fatal error as to justify the discharge of the accused upon a writ of *habeas corpus*.

In *Charlton vs. Kelly*, 229 U. S. 447, which was a case arising under our treaty with the Kingdom of Italy, it was said:

"There is not and can not well be any uniform rule determining how far an examining magistrate should hear a witness produced by the accused person. The proceeding is not a trial. The issue is confined to the single question as to whether the evidence for the State makes a *prima facie* case of guilt sufficient to make it proper to hold the party for trial. Such committing trials, if they may be called trials in any legal sense, are usually regulated by *local statutes*."

In that case the committing magistrate refused to hear evidence of insanity and his action in so doing was sustained by the Supreme Court, but the opinion states that by the law of New Jersey an accused has no right to have evidence exonerating him go before a grand jury and in that State, unless the prosecution consents, such witnesses may be excluded.

We have already seen that the law of Louisiana is the opposite, in that respect, to the law of New Jersey.

See also—

In re Martin, 5 Blatchford, 303.

If the authorities we have cited upon this point do not of themselves conclusively establish the error of the committing judge in excluding all evidence of witnesses who were present in Court and who had come great distances to testify in explanation of the alleged transactions, and in excluding all evidence of Colonel Collins except his admissions of identity and presence at the place and time of the alleged transactions, the statute that we now refer to would certainly seem to dispose of the matter in favor of our contention.

Section 5270 of the Revised Statutes of the United States provides that whenever there is a treaty or convention for extradition between the Government of the United States and any foreign Government, the Judge or Commissioner, having jurisdiction in the place where the accused is found, shall issue his warrant for the apprehension of the person charged that he may be brought before such Judge or Commissioner

“to the end that the evidence of criminality may be heard and considered.”

If there had never been judicial interpretation of the words we have quoted from the statute, showing that “evidence of criminality” means evidence both for the prosecution and for the accused; if the treaty between Great Britain and our Country had omitted the provision, heretofore referred to,

which makes the "laws of the place where the fugitive shall be found" the sole test of procedure and criminality, the Act of Congress of August 3, 1882, Chap. 378, Sec. 3, 22 Stat. 215, would resolve this question in favor of our contention, for in that statute it is provided that:

"On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged, setting forth that there are witnesses whose evidence is material to his defense, that he can not safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means and is actually not able to pay the fees of such witnesses, the judge or commissioner before whom such claim for extradition is heard may order that such witnesses be subpoenaed and in such cases the cost incurred by the process and the fees of witnesses shall be paid in the same manner that similar fees are paid in the case of witnesses subpoenaed on behalf of the United States."

If, as the committing Judge must have supposed, Colonel Collins had neither the right to testify on his own behalf, or to have witnesses examined on his behalf, then there has stood upon the statute books of the United States during thirty-six years, a perfectly useless and misleading statute, for it is impossible to conceive that Congress intended that an indigent accused was to have the right to testify and examine witnesses on his own behalf in extradition proceedings, unless that same privilege is to be extended to all persons alike.

As was pointed out by this Court in the case of *Grin vs. Shine*, 187 U. S. 181 (47 L. Ed. 130), it is not intended that extradition treaties should be made the pretext for collecting private debts or of wreaking individual malice. For this reason defects in extradition proceedings which are merely technical are entitled to receive full and deliberate consideration. In this case not only technical but fundamental rights of the petitioner have been disregarded.

CONCLUSION.

Lieutenant-Colonel Charles Glen Collins should be discharged from custody, upon the following grounds:

1. That the transactions proved by the depositions are not criminal in their nature, even according to the Indian law.
2. That even if said transactions are criminal according to the Indian law, they constitute the offense of cheating under Section 420 of the Penal Code of India, and that said offense is not an extraditable one under either of the three extradition treaties in force between this Country and Great Britain.
3. That there is a material difference between the offense of cheating under Section 420 of the Penal Code of India and the extraditable offense of obtaining property by false pretenses, in that the gist of the Indian offense of cheating is the failure to perform a promise of future payment, where the intent not to perform is proved to have existed at the time of the making of the promise, while the gist of the extraditable offense of obtaining property by false pretenses is a false representation concerning a past or present fact.
4. That under the statutes of the United States and the extradition treaties with Great Britain, the law of the place where the person charged is found, determines the character and the competency of evidence of alleged criminality necessary to justify such person's apprehension and commitment for trial, to the same extent as if the crime or offense had been committed at the place where such person is found, and that the transactions proved by the depositions constitute no offense or crime under the laws of Louisiana.

5. That there is a fatal variance in each of the three sets of documents in that the charges in each case are that the offense of cheating has been committed, while the certificates of the Secretary for the Indian Government and of the Consul-General of the United States recite the charges to have been of an entirely different nature and character.

6. That the committing Judge erred in excluding the evidence offered by and on behalf of the accused.

Each one of these grounds is alone sufficient to justify the discharge of the accused. The Department of State of the United States is not a Collection Agency for either foreign or domestic merchants, nor should it be possible for it to be so used.

Respectfully submitted,

J. ZACH. SPEARING,
J. KEMP BARTLETT,
Attorneys for Appellant.

DEC 1 1918
JAMES D. MANN

Supreme Court of the United States,

OCTOBER TERM 1918.

No. [REDACTED] 850

CHARLES GLEN COLLINS, APPELLANT,

vs.

FRANK M. MILLER, U. S.

MARSHAL FOR THE EASTERN DISTRICT OF LOUISIANA.

No. [REDACTED] 851

TOM. F. CARLISLE, BRITISH CONSUL GENERAL,
Appellant,

vs.

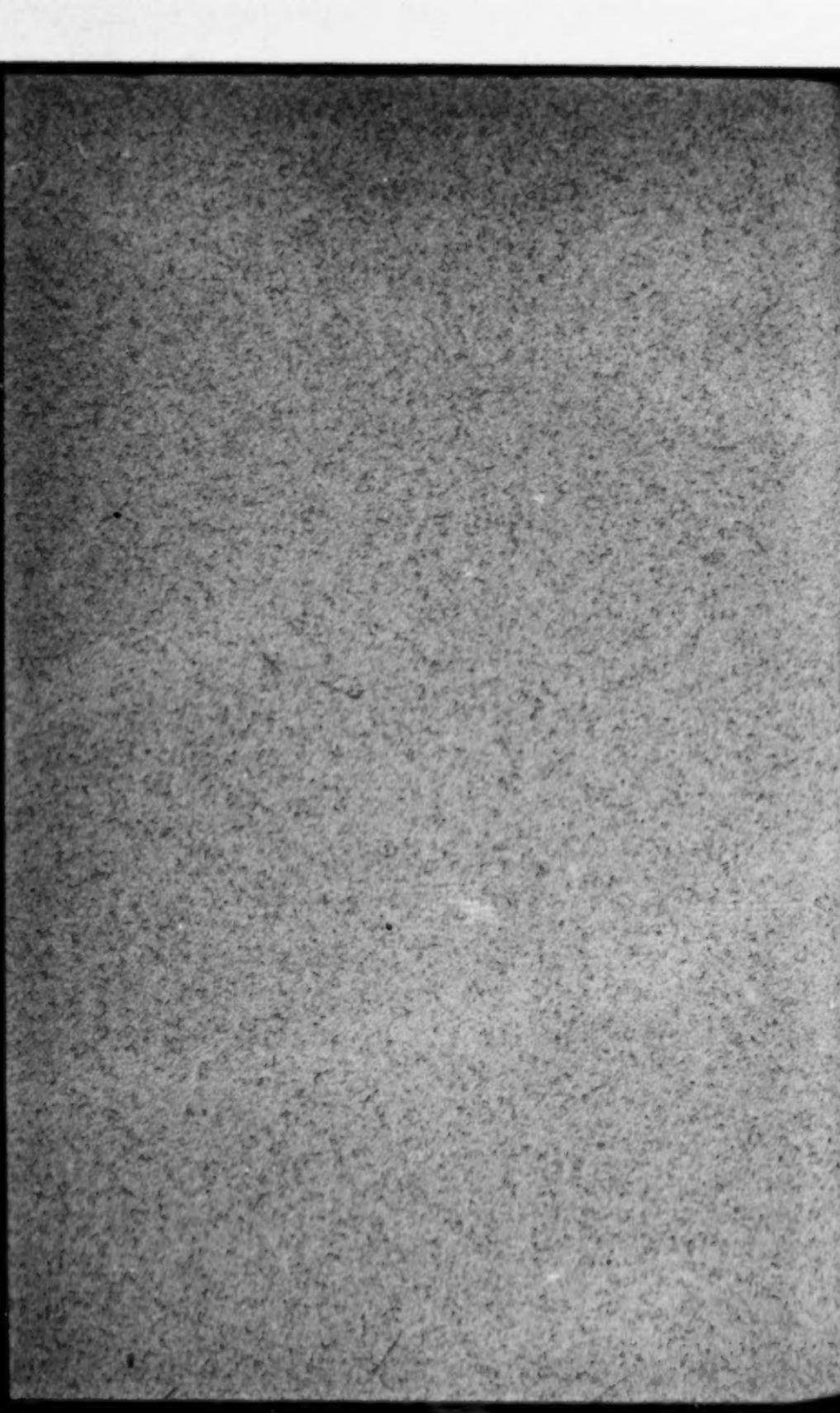
CHARLES GLEN COLLINS.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA.

**BRIEF FOR APPELLEE IN No. 977 AND FOR
APPELLANT IN No. 978.**

ROBERT H. MARR,
CHARLES FOX,

*Of Counsel for Appellee in No. 977
and for Appellant in No. 978.*



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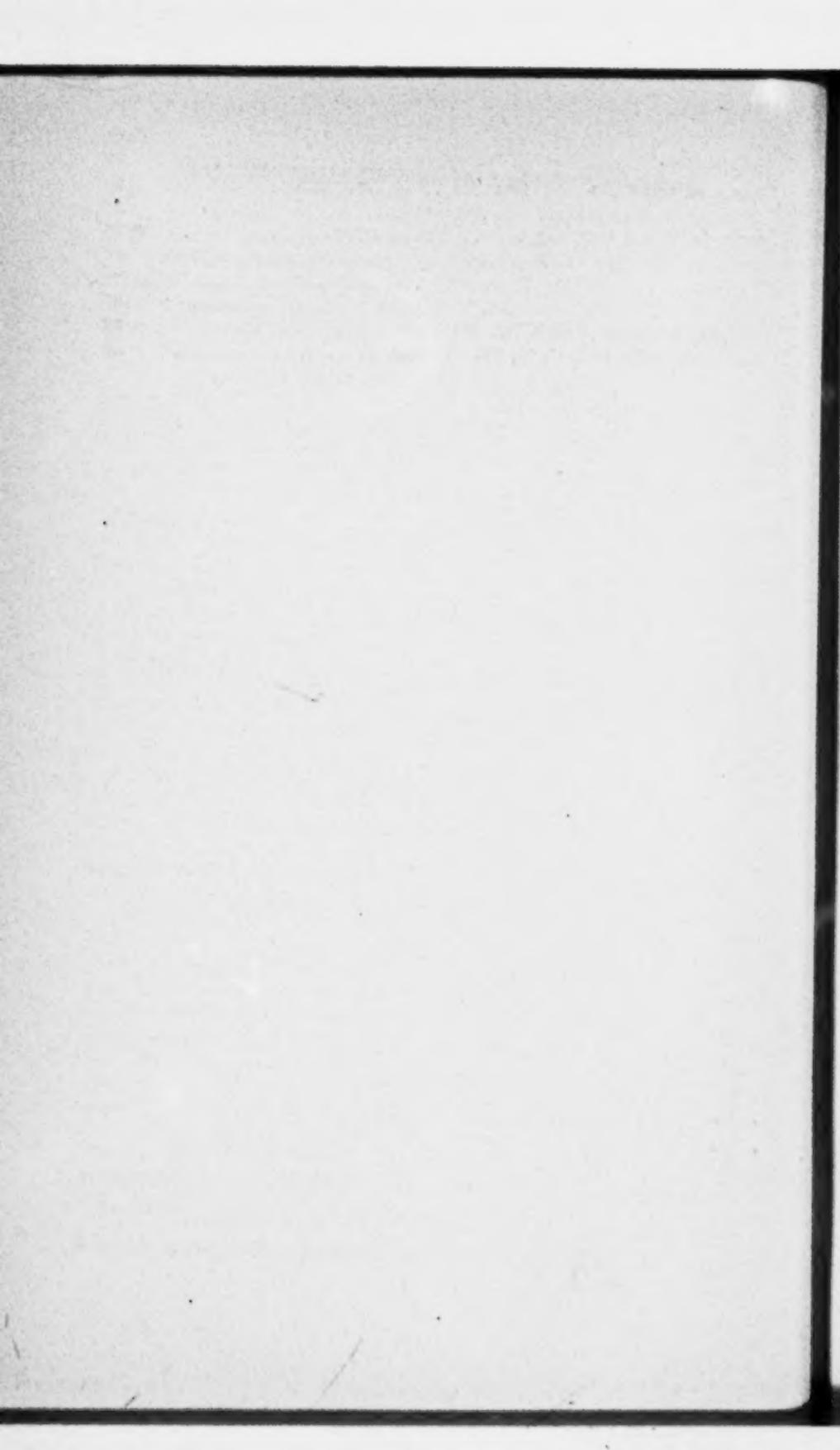
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Supreme Court of the United States.

October Term 1918.

No. 977.

CHARLES GLEN COLLINS, APPELLANT,

vs.

FRANK M. MILLER, U. S.

Marshal for the Eastern District of Louisiana.

No. 978.

TOM. F. CARLISLE, BRITISH CONSUL GENERAL, APPELLANT,

vs.

CHARLES GLEN COLLINS.

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA.**

STATEMENT.

The appellant in No. 977 was committed for extradition, upon three separate charges of obtaining property by false pretences in India.

The proceedings were held before and heard by Hon. Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana, at New Orleans. He deemed the evidence sufficient to sustain the charges and committed the accused to

abide the order of the President of the United States in the premises (pp. 100-101) and certified the proceedings to the Secretary of State (p. 104).

The complainants in India were respectively Pohoomull Brothers, Ganeshi Lall & Sons and Mohamed Alli Zaimel Ali Raza.

The extradition treaty with Great Britain of 1900-1901 (32 Stat. 1864) provides for extradition for the crime of "obtaining money, valuable securities or other property by false pretences".

The appeal in No. 977 is from the judgment (p. 105) of the District Court for the Eastern District of Louisiana, denying the application of the appellant for a writ of *habeas corpus* to review his commitment on the charge in the Mohamed Alli Zaimel Ali Raza case.

The appeal in No. 978 is from the same judgment of the same District Court, granting a writs of *habeas corpus* to Collins on his commitment on the charges in the Pohoomull Brothers and Ganeshi Lall & Sons cases, but remanding him to the House of Detention in New Orleans and sending the proceedings back to Judge Foster to the end that the accused be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana, the accused not having been given the opportunity in the first instance to testify in his own behalf (p. 61). The error assigned in No. 978, is the granting the writs of *habeas corpus* and remanding the proceedings to Judge Foster that the accused be given an opportunity to introduce such evidence as he might offer at a preliminary examination under the laws of Louisiana (p. 116).

POHOOMULL CASE.

The accused was charged (pp. 11-13) with obtaining a pearl necklace on February 7th, 1917 in Bombay, India, from Poohomull Brothers by false pretences, by representing that he was a wealthy man; that he then and there had a right to draw a draft offered in payment for the necklace for £5000 on Messrs. E. Curtice & Co., 8 Clarges Street, London, but the fact was that the accused was not a wealthy man but on the contrary, a bankrupt, and had no right to draw a draft for £5000 or any amount on E. Curtice & Co.

The information and depositions in support of this charge show that Collins (pp. 16-19) had made some purchases from Poohomull Brothers for which he had paid cash and later purchased this pearl necklace for 75000 rupees and gave a draft (p. 28) for £5000 on E. Curtice & Co. (p. 20) 8 Clarges Street, London in payment.

The complainants were not satisfied with this draft and did not deliver the necklace, (p. 20) until after an interview was held with the complainants' representatives', accused, and the Manager of the International Bank at Bombay. The latter suggested to the accused to wire to E. Curtice & Co. to pay £5000 to the International Bank's office in London (p. 20). Subsequently the accused informed complainants that he had cabled to E. Curtice & Co. and that the amount of the draft would be paid to the International Bank in London on receipt of the cable.

On February 7th, 1918, the necklace was delivered on behalf of the accused (p. 22), the accused assuring the complainants that he had sent the telegram as arranged;

that the amount would be paid by E. Curtice & Co. to the International Bank at London and trusting to these assurances, the necklace was delivered. (pp. 21-23)

On February 10th, 1917 (p. 20) the complainants, having some drafts to meet, obtained 15000 rupees from the accused on account of the Curtice draft, the proceeds therefrom not having been received; the 15000 rupees to be returned to the accused when the proceeds of the Curtice & Co. draft had been received in Bombay.

On February 22nd, 1917, (pp. 20-28) the complainants were advised by letter from the International Bank that their London office had received no moneys from E. Curtice & Co. The next day the accused was interviewed and stated he had instructed his London agents to sell some shares but they advised him against doing so and had suggested a loan instead.

On February 25th, 1917 another interview was had with the accused when he stated it would take a month to sell the shares and proposed to give them a draft for £4000 on the firm of William Collins Sons & Co. of which he stated he was a partner and the firm would not refuse a draft on them. Upon this representation the draft upon E. Curtice & Co. was returned to the accused and the draft on William Collins Sons & Co. was taken by the complainants who agreed not to present it until April 15th, 1917 (pp. 17-21-23).

On February 27th, 1917, the accused left India (pp. 18-21).

On April, 21st, 1917 the complainants were advised (pp. 19-21-25-29) that payment of the draft on William Collins Sons & Co. had been refused with the message "no authority to draw", and that the draft had been presented twice but had not been paid. It also appears

that the accused was not a member of the firm of William Collins Sons & Co. (p. 30 and pp. 5 and 6, addition to record.)

GANESHI LALL & SONS.

The accused was charged (pp. 34-35) with obtaining on February 19th, 1917, from Ganeshi Lall & Sons by false pretences, one emerald and diamond necklace, five emeralds, one star ruby and three sapphires of the value of £4500 by falsely representing that he was a wealthy man, a partner in the firm of William Collins Sons & Co. of Glasgow and London; that he was a Colonel in the Howe Batallion of the Royal Naval Division; that he was then on six months leave; and he then and there had a right to draw a draft for £2000 on Messrs. E. Curtice & Co., 8 Clarges Street, London; that the said E. Curtice & Co. were bankers and that he, as a man of wealth, was amply entitled to an additional credit of £2000; whereas in truth and in fact he was not then and there a wealthy man but on the contrary, a bankrupt; that he was not and never had been a member of the firm of William Collins Sons & Co.; that he was not a Colonel in the Howe Batallion of the Royal Naval Division and was not then and there on six months' leave; that he had no right to draw a draft for £2000 or any other amount on E. Curtice & Co.; that E. Curtice & Co. were not bankers and that he was not entitled to additional credit of £2000 or to any credit whatsoever.

The information and depositions in support of this charge (pp. 39-53) show that this firm first came into contact with the accused in January 1917 by his making small purchases (p. 42) and at that time the accused gave to a member of the firm, his card (p. 48) which reads:

"Lieut. Col. C. G. Collins, 51 South Street, W., Park Lane, Howe Batallion, Royal Naval Division."

On February 19th, 1917, the accused at Delhi purchased the jewelry involved in this charge (p. 46) and gave a check on account thereof for £500, but before credit was given to him, the accused told the complainants that he had some interest in the Canadian Railway and was a partner of William Collins Sons & Co. and had some shares in London too (p. 42). After the payment of the £500, there remained a balance of £4000, for which he gave a promissory note payable on E. Curtice & Co., 8 Clarges Street, London, for £2000 (p. 37), and a draft on this same firm for £2000 (p. 48), and the accused told complainants that he would wire to his bankers from Bombay to pay the drafts on the due day. The difference in dates between the note and the draft is accounted for (p. 43) that at the time he purchased the large emerald, the last item in the account (p. 46), not having stamped paper there, the accused said he would give to the complainants' agents, Messrs, Thomas Cook & Sons at Bombay (p. 43), a draft for £2000, which he did (p. 48); that the complainants testify that if it had been known the accused was an undischarged bankrupt and E. Curtice & Co., boarding house keepers, they would not have given the accused the jewelry and would not have accepted the draft in Bombay; that they knew William Collins Sons & Co. to be a good firm and believed the accused when he assured them he was a partner therein and believed all his representations. (p. 43). Neither the draft or the note given by the accused were paid. The letter and report in evidence (pp. 50-52) show that Colins was adjudicated a bankrupt in England on the 19th of August, 1904, with heavy liabilities and a second petition of

bankruptcy was filed against him in 1906, but he did not surrender to his examination; that he was not in any way connected with the firm of William Collins Sons & Co. that E. Curtice & Co. were not bankers and that E. Curtice & Co. was not aware any bill had been drawn upon them.

MOHAMED ALLI ZAIMEL ALI RAZA CASE.

The accused was charged with obtaining in Bombay on February 26, 1917, from Mohamed Alli Zaimel Ali Raza by false pretences (p. 76), one pearl button of the price and value of £1700 by representing that he was a wealthy man; that he was a partner in the firm of William Collins Sons & Co. of Glasgow and London; that he was a colonel in the Howe Battalion of the Royal Naval Division and was then on six months leave; that he then and there had a right to draw a draft for £1700 on Messrs. E. Curtice & Co. and that the said draft would be paid and that the said E. Curtice & Co., 8 Clarges Street, London, were bankers: whereas in truth and fact the accused was not then and there a wealthy man, but on the contrary, a bankrupt; that he was not and never had been a partner in the firm of William Collins Sons & Co.; that he was not a colonel in the Howe Battalion of the Royal Naval Division and that he was not then and there on six months leave; that he had no right to draw a draft for any amount on E. Curtice & Co. and the accused then and there knew said draft would not be paid and the said E. Curtice & Co. were not bankers.

The information and depositions in support of this charge (pp. 79-87) show that Mrs. Olsan purchased some pearls (p. 79) and that the accused chose a pearl button for himself. He gave to this complainant and another

witness (p. 81) each a diary and wrote in the diaries, Lieut. Col. Charles G. Collins, C. M. G., c/o Messrs. Collins, Sons & Co., Ltd., Glasgow, Scotland (p. 83) and stated that William Collins Sons & Co., was his firm; that he held a considerable number of shares; that he was a partner in the firm; that he was on six months leave and would not take an active part in the business (p. 81).

In this case the accused was examined as a witness in his own behalf (pp. 89-92) and attempts to make it appear that the purchase of this pearl button was part of the transaction in which the necklace was purchased for Mrs. Olsan; it appears in his testimony, according to his own story, that she paid for the necklace that she purchased with a check on her father's firm of bankers and that he paid for the pearl button with a £1,700 draft on E. Curtice & Co. In his testimony he does not claim that E. Curtice & Co. were bankers or that there was any such firm or that such a firm had ever been his agents and admits that Mr. E. Curtice had not been in the banking business; and states that Curtice was the owner of a number of boarding-houses and hotels and that he was a business man to that degree and had been associated with him many times in the past in business deals (p. 92). He admits he drew drafts on E. Curtice & Co. without authorization and without notification and without funds there to meet them (pp. 92-97) but claims they always paid his drafts in the past. He acknowledged that a petition for involuntary bankruptcy was filed against him in the United States in 1902. He also admits that in January, 1916, when he was making these representations and giving out his diaries and cards, that he was not a Lieut.

Col. in the Royal Naval Division ; that his connection with the Admiralty had to come to an end (p. 94). The representation made by him that he was a Lieut. Col. in the Howe Battalion of the Royal Naval Division on six months leave upon his own testimony was a false representation. In his testimony he does not claim to be a partner in William Collins Sons & Co. but would have it appear that his father had left shares of stock in this corporation in trust for the accused together with his brothers and sisters but when asked what had become of his interest in that concern, would have it appear that banks in Glasgow had loaned large sums against his share.

On behalf of the prosecution in all of these proceedings, (pp. 59-88) there was offered in evidence the depositions duly certified as required by the act of August 3, 1882, of James Paterson and Hugh Allan, both directors in the firm of William Collins Sons & Co., Ltd., showing that the accused had never been a shareholder in the Company ; that he never was an employee ; that he never had at any time any personal connection with the business ; that he had no authority to draw on the Company ; that he had no reasons whatever for believing that a draft on the Company would be honored (pp. 5 and 6, addition to record).

There was also offered in support of the charges the depositions taken in London of John Richard Campbell Howie and Edward Curtice, showing the presentation of the drafts on Edward Curtice at 8 Clarges Street, London, and the draft drawn on William Collins Sons & Co.,

and that Edward Curtice of 8 Clarges Street, did not carry on any banking business anywhere; that he was not a member of any firm or company; that he did not know of any firm or Company called E. Curtice & Co. or E. Curtice & Sons but that he recognized the accused by the photograph shown to him and had known him for ten or twelve years; that he had known his father and uncle and he had had business relations with the firm of William Collins Sons & Co., Ltd., of Glasgow; that the accused had no right or authority to draw on him in February, 1917, for £5,000 or any other sum; that Edward Curtice had never been advised that he had done so and if he had written to ask for such authority, he would have had to refuse.

Depositions of these witnesses taken in London and Glasgow were offered in each case and were refused admission (pp. 59-89) upon the ground that they were taken June 22, 1918, and were taken in Glasgow and London after the warrant of arrest had issued.

The accused offered as a witness, William H. Smith, to show that the accused was engaged in oil transactions (pp. 64 and 65) to corroborate the testimony that the accused would have given regarding the oil transactions; this was refused.

POINTS.

I.

THE COMMITTING MAGISTRATE HAD JURISDICTION OF THE SUBJECT MATTER AND OF THE ACCUSED. THE REVIEW IN THIS PROCEEDING IS LIMITED TO THE SIMPLE QUESTION AS TO WHETHER THERE WAS ANY LEGAL EVIDENCE AT ALL UPON WHICH THE MAGISTRATE COULD DECIDE THAT THERE WAS EVIDENCE SUFFICIENT TO JUSTIFY THE COMMITMENT OF THE APPELLANT.

It is settled by the decisions of this court, in proceedings for extradition, that if the committing magistrate had jurisdiction of the subject matter and of the accused and the offense charged is within a treaty of extradition, and the magistrate, had before him competent legal evidence upon which to exercise his judgment as to whether the facts were sufficient to establish the criminality of the accused for the purpose of extradition, such decision cannot be reviewed on *habeas corpus* either originally or by appeal.

Charlton vs. Kelly, 229 U. S., 447;
McNamara vs. Henkel, 226 U. S., 520;
Grin vs. Shine, 187 U. S., 181;
Terlinden vs. Ames, 184 U. S., 270-278;
Bryant vs. United States, 167 U. S., 104;
Ornelas vs. Ruiz, 161 U. S., 502-508.

In *Ornelas vs. Ruiz, supra*, (p. 512) Chief Justice Fuller delivering the opinion of the court, says:

“We are of the opinion that it could not be held that there was substantially no evidence calling

for the judgment of the Commissioner as to whether he would or would not certify and commit under the statute and therefore as a matter of law, he had no jurisdiction over the subject matter; this being so, his action was not open to review on *habeas corpus*."

In *Bryant vs. United States, supra*, p. 104, Mr. Justice Brown said:

"The question before the Commissioner in this case was whether in the language of the Treaty of 1842, Article X, 8 stat., 572-576 there was such evidence of criminality according to the laws of the place where the person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed. In other words, according to our laws, whether there was probable cause to believe him guilty of the crime charged. Rev. Stat., 5270, *Benson vs. McMahon*, 127 U. S., 457-462. The question before us is even narrower than that, viz: whether there was any legal evidence at all upon which the commissioner could decide that there was evidence sufficient to justify his commitment for extradition."

In *McNamara vs. Henkel, supra*. It was held that the question simply is whether there was any competent evidence before the commissioner entitling him to act under the statute. The weight of the evidence was for his determination.

II.

THERE WAS COMPETENT EVIDENCE BEFORE THE EXTRADITION MAGISTRATE JUSTIFYING THE HOLDING OF THE ACCUSED FOR EXTRADITION. THE CERTIFICATE OF THE CONSUL GENERAL OF THE UNITED STATES AT CALCUTTA, BEING IN THE REQUIRED FORM, THE DEPOSITIONS WERE PROPERLY ADMITTED IN EVIDENCE.

The Consul's certificate states that the annexed papers "are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the Tribunals of British India as required by the Act of Congress of August 3rd, 1882" (p. 14).

The Act of August 3rd, 1882 (22 Stat. 216), is the law now in force, as to evidence on the hearing in an extradition case. Section 5 of this Act is as follows:

"Evidence on the hearing. 'In all cases where any depositions, warrants, or other papers or copies thereof shall be offered in evidence upon the hearing of any extradition case under Title sixty-six of the Revised Statutes of the United States, such depositions, warrants and other papers, or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant or other paper

or copies thereof, so offered are authenticated in the manner required by this act. ’ ’ ’

Where documentary evidence has been authenticated as required by the statute, it is admissible, the certificate determines the admissibility thereof leaving to the extradition magistrate merely the question of determining the sufficiency of the evidence therein contained.

Elias vs. Ramirez, 215 U. S., 398;
Grin vs. Shine, 187 U. S., 192.

The certificate of the principal diplomatic or consular office of the United States if in proper form is absolute proof, whatever may be the tenor of the certificates of the foreign officials to the same documents.

Re Fowler, 18 Blatch., 430; s. c., 4 Fed. Rep., 303;
Re Behrendt, 22 Fed. Rep., 700.

A review of the evidence discloses the fact that accused started out with the settled purpose to swindle Indian jewelers to as large an extent as possible: the son of a rich and prominent family, a man of wide travel and experience in practically every quarter of the world, and used to command, makes his appearance at Bombay in December of 1916 with two ladies of wealth. The party takes up quarters at a first class hotel, and begins to make the acquaintance of people of position. He gets along well in making friends with English people and with the natives, paying visits to various Rajah friends. To obtain the recognition of Europeans of standing, the relations between accused and the two ladies traveling with him must be satisfactorily explained, hence to his

English acquaintances, he introduces one of the ladies as his wife, the other as his sister; but when he wished to cheat Pohoomull Bros. out of 75,000 rupees of pearls, he has his "fiancee" make the selection as "a wedding present." (p. 22).

After a short stay at the hotel, the Collins party takes a bungalow in a quarter of Bombay where the rich reside, (p. 19) frequents the shops of the complaining witnesses and buys rather freely, paying cash or in checks that are cashed. Having thus skilfully built up a fictitious credit, he prepares to make a grand coup.

On February 2, when Mr. Lokumull called at the Collins' bungalow with the pearl necklace, accused gave in payment a 60 day draft for £5,000 drawn on E. Curtice & Co. Mr. Lokomull returned with the draft and the necklace to Pohoomull Bros., not being satisfied with the draft.

At a conference at which were present, accused, the manager of the bank with which Pohoomull Bros. did business and a member of the Pohoomull firm, it was agreed that accused would telegraph his agents to pay the draft on presentation, thus changing it from a time draft to a sight draft. With this understanding, the draft was accepted and on February 7, the necklace was delivered to accused. On February 10, Pohoomull Bros. having drafts to meet requested accused to make some payment in cash, and accused did then give a check on Thomas Cook & Sons for 15,000 rupees. On February 22, the Bank informed Pohoomull Bros. that the Curtice draft had not been paid. On February 23, Mr. Lokumull and Mr. Tejumull "went to the accused at his bungalow

and we told him what our banker had written." Then the accused told us that he had wired his agents E. Curtice & Co. to sell some of his shares and that he had received a reply saying that the shares do not fetch the proper value and so it was advisable to get a loan. Accused also said that he had wired to his agents to give the terms on which he could get a loan but that no reply had been received." (p. 23). He then gave a draft for £4,000 on William Collins & Sons & Co., Ltd. Accused knew that the Curtice draft for £5,000 was not going to be paid on presentation and he knew that knowledge of that fact would come to Pohoomull Brothers before he got out of India, hence the payment of £1,000 on February 10th. With full knowledge thus brought home to him of the dishonor by E. Curtice & Co. of the £5,000 draft, accused did none-the-less on February 22, draw on the same firm for £2,000 in favor of Ganeshi Lall, and on February 23, draw on the same firm for £1,700 in favor of Ali Raza. On February 27, the Collins party sailed for Colombo, accused having with him many thousands of pounds worth of jewels, and leaving behind £9,700 of worthless paper.

That all of his representations as to his military position and his membership in the firm of William Collins Sons & Co., and his financial condition which induced the credit and the delivery of the jewelry were all false and untrue.

III.

THE ACTS OF THE ACCUSED WERE CRIMINAL IN INDIA AND IF THEY HAD BEEN COMMITTED IN LOUISIANA, WOULD HAVE BEEN CRIMINAL THERE.

INDIAN PENAL CODE.

SEC. 420—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted in to a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

SEC. 24—Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person is said to do that thing dishonestly.

SEC. 813 of the Revised Statutes of Louisiana reads:

“Whoever, by any false pretense shall obtain, or aid and assist another in obtaining from any person, money, or any property, with intent to defraud him of the same, he shall on conviction, be punished by imprisonment at hard labor or otherwise not exceeding twelve months.”

In British India extradition is governed by the Extradition Acts of Great Britain of 1870 (33 and 34 Vict c 60) and of 1873 (36 and 37 Vict c 60).

The Indian Extradition Act of Nov. 4, 1903 Act XV contained in Legislative Acts of 1903 (p. 163) provides

for the administration in British India of the Extradition Acts of 1870 and 1873 and of the Fugitive Offenders Act of 1881 and for the extradition of criminals in cases to which the extradition acts of 1870 and 1873 do not apply and in the schedule attached to the Act of extradition offences on requisitions from Foreign States, "cheating" reference being made to Sec. 420 of the Indian Penal Code, is named.

That the offense of the accused is called "cheating" in India does not make it without the treaty. It is not necessary that the crime should have the same name in both countries.

As was said in *Greene vs. U. S.*, 154 Fed. R., 406, while the extradition and the indictment must be for the same criminal acts, it does not follow that the crime must have the same name in both countries. The same crime often has different names in different countries. If the act in question is criminal in both countries and within the terms of the treaty nothing more is required. * * * It is not a question of names.

In *Powell vs. U. S.* (C. C. A.), 206 Fed. Rep., 403, it was said that if the complaint intelligibly describes the offense and if the offense so described is punishable by the laws of both countries and if by any name it is included in the extradition treaty that is enough.

In *Wright vs. Henkel*, 190 U. S., p. 58, the Court says:

"The general principle of International Law is that in all cases of extradition *the act done* on account of which extradition is demanded must be considered as a crime by both parties." (Italics ours.)

Where the affidavit charges that accused did receive and retain stolen property, he is not entitled to be discharged on the ground that in the State where found receiving stolen property is a crime, but retaining it is not, the presumption being that the demanding country will not violate its treaties and will not try accused for an offense for which he was not extradited.

Bingham vs. Bradley, 241 U. S., 511.

In *Kelly vs. Griffin*, 241 U. S., 13, 14, it is said:

"It is objected that although perjury is mentioned as a ground for extradition in the treaty, the appellant should not be surrendered because the Canadian Criminal Code, Sec. 170, defines perjury as covering false evidence 'whether such evidence is material or not.' As to this it is enough to say that the assertions charged here were material in a high degree and that the treaty is not to be made a dead letter because some possible false statements might fall within the Canadian Law that perhaps would not be perjury by the law of Illinois. 'It is enough if the particular variety was criminal in both jurisdictions.' "

The United States on behalf of the State of Washington asked in England for the extradition of a fugitive upon evidence which made out a case of larceny and embezzlement within the definition of the Washington Statutes.

In England the same evidence showed neither larceny or embezzlement, but it did show the crime of "fraud by a banker" within Sec. 81 of the Larceny Act, which was an extraditable offense under the treaty of 1889 with the United States.

The prisoner sued out a writ of habeas corpus held that he must be remanded for extradition.

Rex vs. Dix, 18 Times Law Reports, p. 231
(K. B.).

"In *Re Arton*, No. 2, volume L. Q. B. D., 1886, the prisoner had been committed under the treaty between Great Britain and France for a number of offenses within the treaty and among them one offense described as 'faux en écritures de commerce' (falsification of accounts), and a contention was made upon the argument of a writ of habeas corpus, that under the law of England the accused was not guilty of forgery; that the falsification was not in the order of committal described as committed by Arton as a director, officer, or member of a public company, or as a clerk, officer, or servant, which would be necessary to constitute falsification a crime according to English law; and that even if the order of committal were amended in this respect he could not properly be committed for falsification on the ground that such falsification was not a forgery under the English law. The court held that if the acts of the accused established a crime under the laws of both countries and within the treaty for extradition, it was not necessary that such crime should be called by the same name or under the same head. It was sufficient if it be a crime under the laws of both countries and within the treaty; and that treaties ought to receive a liberal interpretation, which means no more than they should receive their true construction according to their language, object and intent.

The same construction of the treaty between Great Britain and France, that a crime need not bear the same name to bring it within the treaty, if

it was criminal by the laws of both countries, was also held in *Re Bellecontre*, 17 Cox, C. C., 253, and *Ex parte Piot*, 15 Cox, C. C., 208."

Cheating is a generic term and applies to any fraudulent device by means of which one is induced to part with the ownership of his property, hence, it necessarily includes the obtaining by false pretenses. It has sometimes been said that the chief distinction between "cheating" and "obtaining by false pretenses" is, that cheating may be false representation as to the future, and that false pretenses may be predicated only on the past or present. But this is inexact: a mere broken promise would not justify an indictment for cheating any more than it would justify an indictment for obtaining by false pretenses.

An essential ingredient of each offense is the existence of the fraudulent intent at the time the goods are obtained and the promise or representation made; if such fraudulent intention does not exist the offense is cheating at Common Law, and obtaining by false pretenses under the law of Louisiana.

In *State vs. Will*, 49 La. An., 1337, it was held that "cheating" and "obtaining by false pretenses" are synonymous. The language of the Court is:

"If a person parts with the ownership and possession of his property as the result of fraud practiced upon him, it is not larceny, but a cheat at common law, or obtaining goods under false pretenses under our statute."

If a man buys goods under the representation that it is his intention to pay for the same, and he then and

there has no such intention, it is cheating at common law and obtaining by false pretenses under the law of Louisiana. But if, at the time of buying the goods, it was his intention to pay for them, his failure to pay is neither cheating nor obtaining by false pretenses.

In *State vs. Jordan*, 34 La. An. 1219, the indictment and conviction was sustained. The Court says:

"The charge against the accused was obtaining goods by false pretenses. Amongst the false pretenses set out in the information is this: that the accused represented 'That he then and there wanted to buy goods on credit of the said firm of Flash, Preston & Co., in fair and unusual honest course of trade, with intent to pay honestly for them, etc.' And this is almost immediately followed by the statement that said Flash, Preston & Co. on the faith of said pretenses did deliver goods."

When Collins gave in payment for the jewelry which he obtained, drafts which he had no authority to draw, he obtained by false pretenses.

In *State vs. Seipel*, 104 La., 67, it was held that an indictment for obtaining money under false pretenses which avers that accused did falsely pretend that he had certain moneys deposited to his credit in bank, against which he could draw a check, and upon which he did draw a check on which he obtained money, is sufficient averment.

When Collins falsely represented himself as a wealthy man and entitled to credit, and falsely represented himself as a partner in William Collins Sons & Co., and obtained the jewelry, he obtained by false pretenses.

In *State vs. Tessier*, 32 La. An., 1227, where the indictment and conviction were sustained, defendant's false pretenses were that his name was Smith, that he was a photographer and in business at Natchitooches, that he had at his house fifty dollars, out of which, he promised to pay the prosecutor twenty dollars the next morning. In this case the Court also said,

"It is not necessary that the false pretenses should be the sole inducement by which the property is parted with; if they have controlling influence, it is enough, though other minor considerations operate upon the mind of the party."

The learned and experienced Judge who heard the proceedings was familiar with the laws of Louisiana and held that the evidence made out a clear case *prima facie* of obtaining goods by false pretenses (pp. 72-75).

IV.

PROCEEDINGS FOR EXTRADITION ARE NOT LIMITED OR CONFINED TO THE RULES APPLICABLE TO PRELIMINARY EXAMINATIONS AS TO LOCAL CRIMES IN THE PLACE WHERE THE PERSON SOUGHT FOR ON EXTRADITION, IS FOUND.

The provisions in the treaty that delivery up to justice "shall only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged, shall be found, would justify his apprehension and commitment for trial, if the crime or offense had been there committed" were not intended to cover or have any reference to local rules of prac-

tice, but simply that if the *evidence of criminality*, justified a commitment for trial, in the place where the accused was found commitment should follow.

In *Elias vs. Ramirez*, 215 U. S., 398, 409, an extradition proceeding which was commenced in Arizona for the extradition of the accused to Mexico on the charge of forgery: the depositions and papers introduced in support of the charge contained, statements of two persons unsworn to, the depositions had attached the certificates of the U. S. Ambassador in Mexico and the charge d'affairs that they were "properly and legally authenticated so as to entitle them to be received for similar purposes" by the Act of Congress of August 3, 1882, and Mr. Justice McKenna says at p. 409:

"It is further contended that the statements of Resas and Euriques were unsworn to and because unsworn to were not admissible in evidence; that "under the common law and the law of Arizona the unsworn statement of no witness is competent upon a hearing before a committing magistrate" and would not justify a commitment for trial in Arizona. It is hence contended that it was not sufficient to justify the extradition of the appellee. *In re Egita*, 62 Fed. Rep., 972; *In re McPhun*, 30 Fed. Rep., 57; *Benson vs. McMahon*, 127 U. S., 457, are adduced to sustain the contention. The answer to the contention is that the statute providing for extradition makes the depositions receivable in evidence and provides that their sufficiency to establish the crime shall be such as to create a probability of the commission by the accused of the crime charged against him. This is

the principle announced by the cases cited by the appellee."

To same effect *Ex parte La Mantea*, 206 Fed Rep., 330.

In *ex parte Glazer*, 176 Fed. Rep., 702 (C. C. A.) an extradition proceeding, the deposition of an accomplice, uncorroborated, was used in support of the extradition, and it was held that the provisions of the New York Code, that a conviction could not be had upon the uncorroborated evidence of an accomplice had no application.

In *Gluckman vs. Henkel*, 221 U. S., 512, the complaint referred to bills of exchange and the depositions showed them to be promissory notes. Mr. Justice Holmes says:

"It is common in extradition cases to attempt to bring to bear all the factitious niceties of a criminal trial at common law. But it is a waste of time. For while, of course, a man is not to be sent from the country merely upon demand or surmise, yet if there is presented, even in somewhat untechnical form according to our ideas, such reasonable ground to suppose him guilty as to make it proper that he should be tried, good faith to the demanding government requires his surrender. *Grin vs. Shine*, 187 U. S., 181, 184; see *Pierce vs. Creecy*, 210 U. S., 387, 405. We are bound by the existence of an extradition treaty to assume that the trial will be fair. The evidence in this case seems to us sufficient to require us to affirm the judgment of the Circuit Court."

V.

THE EXTRADITION JUDGE DID NOT ERR IN REFUSING TO HEAR THE TESTIMONY OF THE ACCUSED WHEN IT CLEARLY AND DISTINCTLY APPEARED THAT THE TESTIMONY COULD NOT ALTER THE CONCLUSION TO BE ARRIVED AT FROM THE DEPOSITIONS IN SUPPORT OF EXTRADITION.

Mere errors in the rejection of evidence are not subject to review on *habeas corpus*.

Benson vs. McMahon, 127 U. S., 457, 461;
Terlinden vs. Ames, 184 U. S., 270, 278;
McNamara vs. Henkel, 226 U. S., 520.

The record (p. 60) shows that the accused was sworn and after testifying that he was the person referred to in the depositions from India and who his companions there had been, and a question had been put by counsel to the accused, as to why the accused had gone to Norway the Court asked what was the purpose of the testimony and a colloquy occurred between counsel for the accused and the Court (pp. 60-61) the Judge indicated that the only matter before him was the question of identity and the sufficiency of the depositions, that a defense was for the Court when the accused is tried in the country that requests his extradition.

Counsel for the accused was permitted to place upon the record his tender of proof (pp. 61-64).

If he had been allowed to testify to all contained in the offer, it would not have established his innocence of the charges in the *Pohoomull* and *Ganeshi Lall* cases: there would have yet remained the competent evidence in

the depositions, showing probable cause and justifying his commitment for trial.

In the *Raza* case the accused (pp. 90-97) testified as fully as he desired and this testimony was heard by the same Judge who heard the other cases and they all appear to have been consolidated (p. 98) before the decision of the *Raza* case (p. 98).

The ruling of the extradition Judge was based upon the decision in the case of *Charlton vs. Kelly*, 229 U. S., 456, that matters of defence were for the trial Court and not the committing Magistrate: that a proceeding in extradition is not a trial, and the issue is not the actual guilt, but whether there is a *prima facie* case sufficient to hold the accused for trial. In the cited case insanity was offered as a defense.

It was held that the issue in an extradition proceeding is confined to the single question of whether the facts for the State make a *prima facie* case of guilt sufficient to make it proper to hold the party for trial; and an offer of testimony which is in the nature of a defense can be excluded and it was also held that a writ of *habeas corpus* could not be used as a writ of error and that mere errors in the rejection of evidence are not subject to review by a writ of *habeas corpus*.

The claim was strenuously asserted that under Sec. 3 of the Act of August 3, 1882, witnesses for the accused were required to be heard.

Mr. Justice Lurton, p. 641, says:

"The phrase in §3 of the Act of August 3, 1882, 'that he' (the accused) 'cannot safely go to trial without them' (witnesses) 'cannot be construed as giving a right to a full trial in violation of treaty

stipulations,' but it must be confined to such a preliminary hearing only as was already allowable under the existing practice; viz., such as is appropriate to a hearing having reference only to a commitment for future trial.

"There is not and cannot well be any uniform rule determining how far an examining magistrate should hear the witnesses produced by an accused person. The proceeding is not a trial. The issue is confined to the single question of whether the evidence for the state makes a *prima facie* case of guilt sufficient to make it proper to hold the party for trial. Such committing trials, if they may be called trials in any legal sense, are usually regulated by local statutes. Neither can the courts be expected to bring about uniformity of practice as to the right of such an accused person to have his witnesses examined, since if they are heard, that is the end of the matter, as the ruling cannot be reversed.

"In this case the magistrate refused to hear evidence of insanity. It is claimed that because he excluded such evidence, the judgment committing appellant for extradition is to be set aside as a nullity, and the accused set at liberty. At most the exclusion was error, not reviewable by *habeas corpus*. To have witnesses produced to contradict the testimony for the prosecution is obviously a very different thing from hearing witnesses for the purpose of explaining matters referred to by the witnesses for the Government. This distinction was taken by Mr. Justice Washington in the case of *United States vs. White*, 2 Washington, C. C., when he said:

"Generally speaking, the defendant's witnesses are not examined upon an application to bind him over to answer upon a criminal charge. The de-

fendant's witnesses are never sent to the grand jury, except where the attorney for the prosecution consents thereto. But in this incipient stage of the prosecution, the judge may examine witnesses who were present at the time when the offense is said to have been committed, to explain what is said by the witnesses for the prosecution, and the cross-examination of the witnesses for the prosecution is certainly improper.

"We therefore conclude that the examining magistrate did not exceed his authority in excluding evidence of insanity. If the evidence was only for the purpose of showing present insanity by reason of which the accused was not capable of defending the charge of crime, it is an objection which should be taken before or at the time of his trial for the crime, and heard by the court having jurisdiction of the crime. If it was offered to show insanity at the time of the commission of the crime, it was obviously a defense which should be heard at the time of his trial, or by a preliminary hearing in the jurisdiction of the crime, if so provided for by its laws. By the law of New Jersey, insanity as an excuse for crime is a defense and the burden of making it out is upon the defendant. *Graves vs. State*, 45 N. J. L., 203; *State vs. Maioni*, 78 N. J. L., 339, 341; *State vs. Peacock*, 50 N. J. L., 34, 36. A defendant has no general right to have evidence exonerating him go before a grand jury, and unless the prosecution consents, such witnesses may be excluded. 1 Chitty Crim. Law, 318; *United States vs. White*, *supra*; *Respublica vs. Shaffer*, 1 Dall., 236, 1 L. ed. 116; *United States vs. Palmer*, 2 Cranch, C. C., 11, Fed. Cas. No. 15,989; *United States vs. Terry*, 39 Fed., 355, 362."

In *Collins vs. Johnson*, 237 U. S., 502, 507, the appellant on his trial offered a defense which the appellant

claimed the trial court arbitrarily denied and refused to consider, and attempted a review of the matter by *habeas corpus* and it was held that the refusal of the proffered defense even were such refusal erroneous, could not at all affect the jurisdiction of the court or amount to more than an error committed in the exercise of jurisdiction and was not reviewable, re-stating the familiar rule that the writ cannot be employed as a substitute for a writ of error.

Re Kelly, 25 Fed. Rep., 368, referred to by counsel for the accused was decided in 1885 since which time the rules in extradition proceedings have been changed or modified and technicalities no longer considered. In that case after the close of the evidence on behalf of the prosecution which had all been taken orally before the Commissioner in Minnesota the defendant called a witness in his behalf and on objection interposed by counsel for the prosecution it was sustained; the District Judge held that the defendant should have been permitted to introduce evidence; that the examination should have been conducted according to the laws of Minnesota where the prisoner was arrested and that under the statutes of Minnesota it enacted "after the testimony to support the prosecution is finished the witnesses for the prisoner, if he has any, shall be sworn and examined."

Accused at the hearing was deprived of no right secured to him under the law of Louisiana regulating preliminary examinations.

The Louisiana Statute (R. S., 1010), regulating preliminary examinations was adopted in 1805 (Chap. VIII, Sec. 1), and has come down to us unchanged at the

present day, except as to what judges or justices may hold these examinations. This statute, so far as pertinent to this controversy reads:

“When the person so accused shall have been brought before the justice or magistrate * * * it shall be his duty to examine on oath such witnesses as may appear against him, and to reduce their depositions to writing. It shall be his duty to receive the voluntary declaration of the person accused, and the answers which, without promise or threat, he shall make to the questions which the examining judge or magistrate shall put to him, and to cause them to be reduced to writing, and signed by the prisoner in his presence and that of two witnesses, or if he cannot sign, to mention that circumstance, and to certify the declaration with his signature and that of two witnesses, which declaration thus certified and signed, shall be evidence before the grand and petit jury.”

In 1805 the Legislature of Louisiana adopted a crimes act, an act “which is the foundation of our penal system” (*State vs. Gaster*, 45 La. A. ,640), and the final section 3990 of the present Revised Statutes provides “that all laws or parts of laws contrary to or in conflict with the provisions of this act, and all laws or parts of laws on the same subject-matter, be and the same are hereby repealed, except the thirty-third section of an act entitled: ‘An act for the punishment of crimes of the Crimes and Misdemeanors approved May 4, 1805. This 33d section of the Crimes Act of 1805 (now R. S., 976) reads:

“All crimes, offenses and misdemeanors, hereinbefore named, shall be taken, intended and construed according to and in conformity with the common law of England; and the forms of indict-

ment (divested, however, of unnecessary prolixity) the method of trial, the rules of evidence; and all other proceedings whatsoever in the prosecution of crimes, changing what ought to be changed, shall be according to the common law, unless otherwise provided."

In *State vs. McCoy*, 8 Rob. (La., 547), it was said:

"The Legislature, in adopting the common law rules of proceeding, method of trial, etc. adopted the system as it existed in 1805, modified, explained and perfected by statutory enactments, so far as those enactments are not found to be inconsistent with the peculiar character and genius of our government and institutions."

And the Court, therefore, held that the venue of indictments for murder was governed by the provisions of 2 and 3 Edw. 6 and 7 and of 2d Geo. 2.

It was held in *State vs. McNeil*, 33 An., 1332, that by adopting the common law rules of evidence in criminal proceedings, as that system existed in 1805, we adopted the provisions of 1 and 2, Phil. and Mary C. 13, Sec. 5, governing the admissibility of depositions taken by the coroner at the inquest, and that the amendment of this statute by Acts of Parliament subsequent to 1805 was without effect in Louisiana.

It was said in *State vs. Wheat*, 111 La., 871, 872:

"With us in Louisiana, the rules of evidence in criminal trials as well as forms of indictment, method of trial, etc., must be according to the common law of England as it existed in 1805, unless otherwise provided.

"At that time (1805) the English statute on the subject of depositions in criminal matters, taken

before coroners and magistrates were 1 and 2 Philip and Mary C. 13, sections 4, 5, and 2 and 3, Philip and Mary C. 10. These statutes of Philip and Mary were received as common law in Louisiana.

"The statutes of Philip and Mary were silent as to what should be done with the certified examinations, but it seems the construction of the common law upon them made them competent as evidence at the later trial on proper showing made."

And the rules which had been established by the English courts and were still in operation in 1805, regulating the circumstances under which such depositions could be read upon the trial has been adopted in Louisiana as a part of the common law, *State vs. Britton*, 131 La., 875; *State vs. Wheat*, 111 La., 871; *State vs. Timberlake*, 50 La. An., 308; *State vs. Laque*, 41 A., 1070; *State vs. Granville*, 34 La. An., 1088; *State vs. Harvey*, 28 La., 105.

"The voluntary declarations of the accused made before the committing magistrate on a preliminary examination, and certified to by him in the presence of two witnesses, in conformity with Section 1010 of the Revised Statutes of 1870, cannot be offered in evidence or used on the trial before the jury by the accused. *Declarations so taken are intended only to perpetuate for the use of the State, such confessions as the accused may choose to make.*" (Italics ours).

State vs. Vandergraff, 23 La. An., 98.

The *Vandergraff* case was affirmed in the following cases: *State vs. Toby*, 31 La., 756; *State vs. Dufour*, 31 La., 804; *State vs. Smith*, (La., 1919) 81 S., 34. In *State*

vs. *Pierce*, 2 M. (La.), 253; it was held, following the common law, that if the magistrate had taken the confession upon oath it was not admissible upon the trial. The same view is expressed by Chitty, (Vol. I, p. 84).

Defendant greatly relies upon *State vs. Stewart*, 34 La. An., 1037. The question really involved was this: Where the testimony for defendant has been taken on preliminary examination, has he the right upon his trial to offer such depositions in evidence under the same conditions as would make depositions taken on behalf of the prosecution admissible? On page 1040 of the opinion, the Court says:

"We think that the reasons advanced by the Judge, in support of his rule, are untenable, and that he erred in excluding the testimony. It is true, as contended by the District Judge, that Section 1010 R. S. directs that in preliminary examinations, the depositions of the State witnesses alone are to be taken down in writing; but it is equally true, that in this State, the forms of indictment, the method of trial, rules of evidence, and all other proceedings in the prosecution of crimes, must be according to the common law of England, as it existed in 1805, unless otherwise provided—33 An., 1332, *State vs. McNeil*. Now under the common law, criminal jurisprudence has firmly established the right of the accused to be defended by counsel, and to have his witnesses heard at the preliminary examination of the offense charged against him. And under provisions of the law of England, directing that the testimony of witnesses against the accused at a preliminary examination, be reduced to writing, it has been held that the Justice ought to take, and certify as well the information, proof and evidence, which

tend in favor of the prisoner, as those which are brought forward against him. Chitty's Criminal Law, Vol. 1, pp. 60 and 64."

The statement by the court that defendant's right to have his witnesses examined at preliminary examination was firmly established at common law would seem to be error. The common law granted no such right, Blackstone IV, 296. The rule at common law was that accused had no right to have his witnesses examined at preliminary examination, but it seems that if they were examined, the defense on his trial before a jury had the right to offer the depositions of his witnesses under the same circumstances under which the crown could offer depositions. See Bishop's Criminal Procedure, Vol. I, Sections 1201 and 1198. The sole authority quoted is Chitty (pp. 79, 80, not 60 and 64), and Chitty cites as his authorities 4 Black. Com., 360, and 1 Ann. St., 2, C. 9. An examination of these citations shows that prior to the statute of Ann, those charged with treason or felony were not allowed on *trial before a jury* to have their witnesses sworn, and this defect that statute remedied, but neither Blackstone, nor the Statute of Ann makes any reference whatsoever to preliminary examinations.—Story (3 Com., Sec. 1786) shows that the Statute of Ann had reference to the trial before a jury exclusively.

"In criminal matters that jurisprudence (namely of the English Courts) is, by positive statutory enactment, made our guide. * * * The consequence is that in criminal matters this court must follow the decisions of the English courts as the best expression of the common law, in preference to those of the Supreme Court of the United States. Adopting this as the correct guide,

it becomes our duty to conform our jurisprudence thereto." *State vs. Scott*, 49 A., 268. Thereupon the court proceeded to overrule *State vs. De Rance*, 34 A., 186. The case of *State vs. Lyons*, 113 La., 993, is to the same effect as the *Scott* case.

"The common law authorities upon all question of procedure in criminal prosecutions are our only guides in such matters."

State vs. De Pass, 31 A., 489.

Following the behest of the Supreme Court of Louisiana, frequently repeated, let us now see what the common law on the subject of preliminary examination is.

"The 2d section of 2 and 3, Phil. and Mary C. 10, says that the justices shall 'take the examination of such prisoners and information of those that bring him of the facts and circumstances thereof; and the same, or as much thereof as may be material to prove the felony, shall put in writing within two days after the said examination.' The only thing that was by that act to be put in writing was that which was material to prove the felony. The 7 Geo. 4, C, 64, S. 2 was in almost the same language. By this act, what the magistrates were to take down in writing was the information on oath 'of those who shall know the facts and circumstances of the case or so much thereof as may be material,' and it does not seem to contemplate evidence for the defense. Then, again, in Jervis's Act, 11 and 12, Vic. C., 42, S. 17, it is mentioned on oath or affirmation of those who shall provide that the magistrate shall 'take the statement on oath or affirmation of those who shall know of the facts and circumstances of the case and shall

put the same into writing. Up to this period, then, it is clear that all that was to be put into writing was the evidence that was material to the charge against the accused, and so matters long continued. Then came Russell Gurney's Act 30 and 31, Vic. C. 35. *By the 3d section of that Act, provision is for the first time made for taking the evidence of the prisoner's witnesses.*"

The Queen vs. Carden, L. R., 5 Q. B. D., 1, 10. (Italics ours.)

*"Generally speaking the defendant's witnesses are not examined upon an application to bind him over to answer upon a criminal charge. The defendant's witnesses are never sent to the grand jury, except when the attorney for the prosecution consents thereto. But in this incipient state of the prosecution, the judge *may* examine witnesses who were present at the time when the offense is said to have been committed, to explain what is said by the witnesses for the prosecution; and the cross-examination of the witnesses for the prosecution is certainly improper."* (Italics ours.)

U. S. vs. White, Fed. Cases, No. 16,685.

This case was decided in the U. S. C. C., (District of Pennsylvania,) in 1807, the statutes of Phil. and Mary being at that time in force in that state.

"At common law witnesses for the accused are not necessarily examined at the preliminary hearing."

Clark Crim. Proc., p. 77.

Wharton Crim. Proc. (1918) Vol. I., Sec. 112, says that under the statute it was not the English practice at pre-

liminary examination to hear any witnesses tendered by the defense, supporting this view by a quotation from Blackstone.

Stephen in his History of the Criminal Law of England, Vol. I, p. 221, shows how preliminary examinations were conducted under the statutes of Philip and Mary (still in force in Louisiana) and compares "Jervis' Act" (1848, 11 and 12 Vic. C., 42) with those statutes. So far from having a right to examine witnesses in his behalf, "the prisoner had no right to be, and probably never was present."

In *re Bates*, Fed Cases, No. 1099, a. (U. S. Dist. Ct., S. C., 1858) minutely defines the method of conducting preliminary examinations under the statutes of Phil. and Mary.

"It is objected that these parties have never been brought before the commissioner, nor examined, nor have the witnesses against them been examined in their presence, nor they allowed the cross-examination of the witnesses. That their commitment in the absence of these prerequisites and without the benefit of counsel, involves a denial of their constitutional and legal rights, and affects the whole proceedings subsequent to the arrest with such gross irregularity that the commitment must be set aside." The Court then goes on to say that preliminary examinations by the magistrates of the United States are according to the laws of the State in which the examination is held, and that South Carolina had continued in force the statutes of Phil. and Mary above quoted. "These statutes may have secured the production before commitment of all the evidence which could be produced against the accused, but, in my judg-

ment, that privilege was secured to him at the expense of others far more important. Be that, however, as it may, these statutes, until 1859, furnished a rule for criminal proceedings in South Carolina." The Court holds that under the statutes of Phil. and Mary the accused had no right to cross-examine the witnesses: "That these constitutional rights [namely, right of assistance of counsel and to be confronted with witnesses] which are supposed to be invaded by this construction are rights which are not contemplated by the constitution in connection with preliminary examination proceedings; the privilege of confronting the witnesses is a privilege which pertains to the trial in court; that it does not extend to all periods in the proceedings is manifest in the fact that it cannot be claimed before the grand jury; a period where, if allowed, it would be far more available for the accused than in the preliminary proceedings before the magistrates. And that the right to have the assistance of counsel is not invaded, since if the statutes of Phil. and Mary were in force it is beyond dispute, in proceedings under them the accused was not entitled to the benefit of counsel as a matter of right."

And the Court quotes as applicable what was said by Chief Justice Marshall, in *Ex parte Bollman*, 4 Cranch, 129:

"Before the accused is put upon his trial all the proceedings are *ex parte*."

The later case of *State, ex rel. Johnson and Britton*, 48 La. Ann., 1405, expresses a view directly the reverse of that announced in the *Stewart* case. And no Louisiana decision has affirmed the language or doctrine of the

Stewart case. An affidavit had been made against Johnson and Britton, charging them with murder, and *habeas corpus* had been applied for to the Supreme Court. The Court said that the application was confessedly for a preliminary examination, and that the Justices of the Supreme Court were not committing magistrates. The Court then goes on to say:

“In contemplation of law, a preliminary examination of an accused person is to be set on foot upon the application of some judge or justice of the vicinage, and its province is to perpetuate the testimony *against* the accused. Revised Statutes, Sec. 1010.” (Italics by the Court).

It is to be noted that defendant at no time offered to make a “voluntary statement,” what he did was to tender his side of the case at length as a witness in his own behalf.

VI.

THERE WAS NO ERROR IN REFUSING TO HEAR THE TESTIMONY OF MR. W. H. SMITH, TENDERED ON BEHALF OF THE ACCUSED (pp. 64, 98).

Counsel (pp. 61, 66) stated what he proposed to prove by Smith, and the documents, and it will be seen that the testimony and evidence tendered would not have been admissible, even had the hearing been on the trial. The purpose of the offers being, not to show what representations accused made when he induced the jewelers to part with their wares, or as to the truth of the representa-

tions, but to show that he expected to make some money out of some sort of an oil speculation, and that, if he had made the money, he could have paid the Indian jewelers.

VII.

THE DEPOSITIONS FROM LONDON AND GLASGOW ON BEHALF OF EXTRADITION, WHICH THE JUDGE EXCLUDED (p. 59) SHOULD HAVE BEEN RECEIVED.

§5271 R. S. originally provided that copies of depositions upon which an original warrant in any foreign country may have been granted attested and certified as required, could be received in evidence as to the criminality of the person apprehended.

This section was amended by the Act of June 9, 1876, C. 133, 19 Stat., 59, omitting the requirement of the attestation of the copies of the depositions by the oath of the party producing them and eliminating the provision that the depositions were limited to those upon which an original warrant of arrest was granted and allowed original dépositions as well as copies to be received in evidence if authenticated and certified to by the principal diplomatic or consular officer of the United States.

The Act of June 19, 1876, was repealed by Section 6 of the Act of August 3, 1882, together with so much of Section 5271 which was inconsistent with the Act of 1882. Section 5 of the Act of August 3, 1882, 22 Stat. 216, is the present law as to the evidence on hearing any extradition case and reads "in all cases where any depositions, warrants or other papers or copies thereof shall be offered

in evidence upon the hearing of any extradition case under title sixty-six of the Revised Statutes of the United States, such depositions, warrants and other papers or the copies thereof, shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be proper and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant or other paper or copies thereof, so offered, are authenticated in the manner required by this act."

It will be observed that there is no limitation as to the period in which the depositions should be taken and provides for any depositions, etc.; these depositions were certified to by a principal diplomatic officer of the United States, the Secretary of the Embassy (Rev. Stat., §1674) at London, and his certificate recites that they are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of India as required by the Act of Congress of August 3, 1882. This certificate entitled them to be received and admitted as evidence. The suggestion may be made that no harm has been done in these particular proceedings by the rejection of these depositions as the accused has been held for extradition but these depositions contained very material evidence as to the falsity of the representations made by the accused as to his partnership in Collins Sons & Co., his financial condition and the lack of authority to draw upon the drawee named in the drafts and

removed the criticism on the letters and reports contained in the papers from India.

VIII.

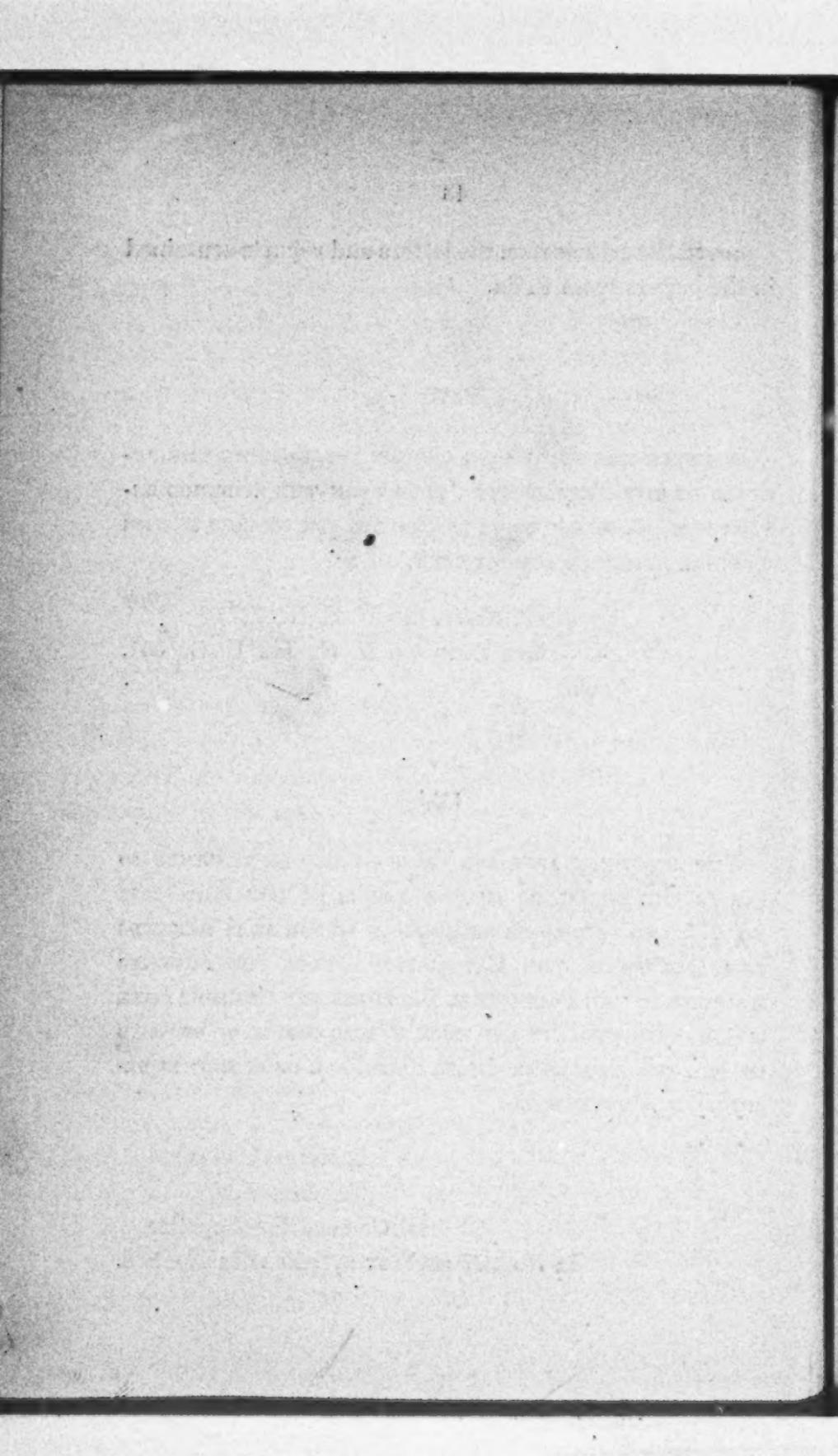
IF THERE WAS SUFFICIENT GROUND FOR HOLDING THE ACCUSED BY THE EXTRADITION JUDGE UPON THE EVIDENCE BEFORE HIM, HE IS NOT TO BE DISCHARGED FOR DEFECTS IN THE ORIGINAL ARREST OR COMMITMENT.

Yordi vs. Nolte, 215 U. S. R., 227;
Nishimura Ekin vs. U. S., 142 U. S., 651,
 652.

IX.

THE JUDGMENT APPEALED FROM SHOULD BE AFFIRMED SO FAR AS THE DENIAL OF HABEAS CORPUS IN THE RAZA CASE NO. 977, AND SHOULD BE REVERSED IN SO FAR AS IT REMANDS THE ACCUSED TO THE EXTRADITION JUDGE FOR FURTHER HEARINGS IN THE POHOOMULL BROTHERS AND GANESHI LALL & SONS CASES, NO. 978 AND THAT HABEAS CORPUS BE REFUSED IN THE PROCEEDINGS IN THOSE CASES, ALL OF WHICH IS RESPECTFULLY SUBMITTED.

ROBERT H. MARR,
 CHARLES FOX,
 Of Counsel for Appellee,
 in No. 977 and for appellant in No. 978.



Supreme Court of the United States.

October Term 1918.

No. 977.

CHARLES GLEN COLLINS, APPELLANT,

vs.

FRANK M. MILLER, U. S.

Marshal for the Eastern District of Louisiana.

No. 978.

TOM. F. CARLISLE, BRITISH CONSUL GENERAL, APPELLANT,

vs.

CHARLES GLEN COLLINS.

**APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA.**

STATEMENT.

The appellant in No. 977 was committed for extradition, upon three separate charges of obtaining property by false pretences in India.

The proceedings were held before and heard by Hon. Rufus E. Foster, Judge of the District Court of the United States for the Eastern District of Louisiana, at New Orleans. He deemed the evidence sufficient to sustain the charges and committed the accused to

abide the order of the President of the United States in the premises (pp. 100-101) and certified the proceedings to the Secretary of State (p. 104).

The complainants in India were respectively Pohoomull Brothers, Ganeshi Lall & Sons and Mohamed Alli Zaimel Ali Raza.

The extradition treaty with Great Britain of 1900-1901 (32 Stat. 1864) provides for extradition for the crime of "obtaining money, valuable securities or other property by false pretences".

The appeal in No. 977 is from the judgment (p. 105) of the District Court for the Eastern District of Louisiana, denying the application of the appellant for a writ of *habeas corpus* to review his commitment on the charge in the Mohamed Alli Zaimel Ali Raza case.

The appeal in No. 978 is from the same judgment of the same District Court, granting a writs of *habeas corpus* to Collins on his commitment on the charges in the Pohoomull Brothers and Ganeshi Lall & Sons cases, but remanding him to the House of Detention in New Orleans and sending the proceedings back to Judge Foster to the end that the accused be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana, the accused not having been given the opportunity in the first instance to testify in his own behalf (p. 61). The error assigned in No. 978, is the granting the writs of *habeas corpus* and remanding the proceedings to Judge Foster that the accused be given an opportunity to introduce such evidence as he might offer at a preliminary examination under the laws of Louisiana (p. 116).

ment, that privilege was secured to him at the expense of others far more important. Be that, however, as it may, these statutes, until 1859, furnished a rule for criminal proceedings in South Carolina." The Court holds that under the statutes of Phil. and Mary the accused had no right to cross-examine the witnesses: "That these constitutional rights [namely, right of assistance of counsel and to be confronted with witnesses] which are supposed to be invaded by this construction are rights which are not contemplated by the constitution in connection with preliminary examination proceedings; the privilege of confronting the witnesses is a privilege which pertains to the trial in court; that it does not extend to all periods in the proceedings is manifest in the fact that it cannot be claimed before the grand jury; a period where, if allowed, it would be far more available for the accused than in the preliminary proceedings before the magistrates. And that the right to have the assistance of counsel is not invaded, since if the statutes of Phil. and Mary were in force it is beyond dispute, in proceedings under them the accused was not entitled to the benefit of counsel as a matter of right."

And the Court quotes as applicable what was said by Chief Justice Marshall, in *Ex parte Bollman*, 4 Cranch, 129:

"Before the accused is put upon his trial all the proceedings are *ex parte*."

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It is to be noted that defendant at no time offered to make a “voluntary statement,” what he did was to tender his side of the case at length as a witness in his own behalf.

VI.

THERE WAS NO ERROR IN REFUSING TO HEAR THE TESTIMONY OF MR. W. H. SMITH, TENDERED ON BEHALF OF THE ACCUSED (pp. 64, 98).

Counsel (pp. 61, 66) stated what he proposed to prove by Smith, and the documents, and it will be seen that the testimony and evidence tendered would not have been admissible, even had the hearing been on the trial. The purpose of the offers being, not to show what representations accused made when he induced the jewelers to part with their wares, or as to the truth of the representa-

COLLINS *v.* MILLER, UNITED STATES MARSHAL
FOR THE EASTERN DISTRICT OF LOUISIANA.

CARLISLE, BRITISH CONSUL GENERAL *v.*
COLLINS.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 350, 351. Argued December 9, 1919.—Decided March 29, 1920.

A judgment of the District Court, in a *habeas corpus* proceeding wherein the construction of a treaty is drawn in question, is not appealable directly to this court (Jud. Code, § 238) unless it is final. P. 365.

It is the duty of this court in every case in which its jurisdiction depends on the finality of the judgment under review, to examine and determine that question whether raised by the parties or not. *Id.*

A judgment in *habeas corpus* dealing with the detention of the relator for foreign extradition on three charges, and denying relief as to one but assuming to order a further hearing by the commissioner as to the others has not the finality and completeness requisite for an appeal to this court. Pp. 368, 370.

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The proper party to appeal from a judgment in *habeas corpus* directing the marshal to release a person held for foreign extradition is the marshal, not the foreign consul upon whose complaint the extradition proceedings were begun. P. 371.

Appeals dismissed.

THE case is stated in the opinion.

Mr. J. Zach. Spearing and *Mr. Guion Miller*, with whom *Mr. J. Kemp Barlett* was on the briefs, for appellant in No. 350 and appellee in No. 351.

Mr. Charles Fox, with whom *Mr. Robert H. Marr* and *Mr. Donaldson Caffery* were on the briefs, for appellee in No. 350 and appellant in No. 351.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

These are appeals from a single judgment entered by the District Court of the United States for the Eastern District of Louisiana on a petition for writs of *habeas corpus* and *certiorari*. The relator had been arrested on extradition proceedings. Each party asks to have reviewed the construction given below to provisions of our treaty with Great Britain, proclaimed August 9, 1842 (8 Stat. 572, 576), and of the supplementary treaty proclaimed April 22, 1901 (32 Stat. 1864). The questions presented are, therefore, of a character which may be reviewed upon direct appeal under § 238 of the Judicial Code. *Charlton v. Kelly*, 229 U. S. 447. But this court has jurisdiction on writ of error and appeal under that section, as under others, only from final judgments. *McLish v. Roff*, 141 U. S. 661; *Heike v. United States*, 217 U. S. 423. And the rule applies to *habeas corpus* proceedings. *Harkrader v. Wadley*, 172 U. S. 148, 162. The fundamental question whether the judgment appealed from

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is a final one within the meaning of the rule has suggested itself to the court; and it must be answered although it was not raised by either party. *Defiance Water Co. v. Defiance*, 191 U. S. 184, 194. In order to answer the question it is necessary to describe the proceedings before the committing magistrate as well as those in the District Court on the petition for a writ of *habeas corpus*.

In October and November, 1918, the British Consul General at New Orleans filed with the Honorable Rufus E. Foster, District Judge of the United States for the Eastern District of Louisiana, three separate affidavits each charging that Charles Glen Collins, who was then within the jurisdiction of that court, had committed at Bombay, India, the crime therein described as obtaining property under false pretences, and that he stood charged therewith in the Chief Presidency Magistrate's Court at Bombay; and asking that he be committed as a fugitive from justice for the purpose of having him returned to India for trial. Warrants of arrest issued and Collins moved, as to each affidavit, to dismiss for want of jurisdiction, contending that the transactions in question were commercial dealings in which he had merely failed to pay debts incurred. Hearings, entitled "In the Matter of Extradition Proceedings of Charles Glen Collins," were had before Judge Foster, at which the Consul General and Collins appeared by counsel. Evidence in support of each of the three affidavits was introduced by the Consul General. Then Collins, who was sworn at his request, admitted his identity and that he had been present in India at the times the alleged crimes were committed. As to one of the charges, that of obtaining a pearl button from Mohamed Alli Zamiel ali Raza, he was allowed to testify further. But he was not permitted to testify as to matters concerning the other two which had been consolidated. And he was not permitted to introduce other witnesses in defense of any of the three

affidavits. After the hearings were concluded Judge Foster made two orders or judgments signed by him as Judge of said United States District Court and entitled in said court. In these orders he found, as to each of the affidavits, that he deemed the evidence sufficient to sustain the charge under the law and the treaty; and as to each he ordered Collins recommitted to the House of Detention in the custody of the United States marshal for that district to await the order of the President of the United States. The two proceedings (which included the three affidavits) were then consolidated. Under date of November 27, 1918, a certificate setting forth his findings together with a copy of the record in all the proceedings was transmitted to the Secretary of State.

This petition for writs of *habeas corpus* and *certiorari* was filed by Collins, in said District Court, on January 8, 1919. It set forth the proceedings before Judge Foster on the three affidavits, and alleged that his detention was illegal and in violation of rights secured to him by the treaty; among other reasons because he was refused permission to introduce evidence as above mentioned. District Judge Grubb ordered that the writs issue; and the marshal made return setting forth in substance the facts above recited. The case was heard before Judge Grubb on February 21, 1919, the record before Judge Foster being introduced. On the same day Judge Grubb, without delivering an opinion, entered an order which declared that "relator's application for *habeas corpus* is denied" so far as concerned the charge of obtaining the pearl button from Mohamed Alli Zaimel ali Raza, and that "the writs of *habeas corpus* are granted" so far as the detention was based on the other two charges, but that the relator be remanded to the House of Detention to await further proceedings in said last two named affidavits.

"And it is further ordered that, as to the said two affidavits last mentioned, this cause be and is hereby re-

manded to the Honorable Rufus E. Foster, Judge, to the end that relator be given the opportunity of introducing such evidence as he might offer at a preliminary examination under the law of Louisiana."

Neither party took any action in respect to such further proceedings before Judge Foster. On March 3, 1919, Collins petitioned for leave to appeal, contending that he should have been discharged on all three affidavits and his appeal was allowed. This is case No. 350 on the docket of this court. Later, the British Consul General petitioned for leave to appeal on the ground that Collins' application should have been definitely denied also as to the commitment on the other two affidavits. His appeal, being No. 351 on the docket of this court, was allowed March 28, 1919.

First: Was the judgment appealed from a final one? A single petition for a writ of *habeas corpus* thus sets forth detention of the relator on three separate affidavits. As to the commitment on one of these the judgment entered by Judge Grubb directed that the writ be "denied." Such denial, or more appropriately dismissal, of the writ would obviously have been a final judgment, if it had stood alone. *McNamara v. Henkel*, 226 U. S. 520, 523. But the judgment appealed from dealt also with the detention on the other two affidavits. It declared that "the writs of *habeas corpus* are granted" as to the commitments on the other two affidavits and ordered that the case be remanded for further hearing before Judge Foster.

What was thus called granting the writ was not a discharge of the prisoner, deferred as in *In re Medley*, 134 U. S. 160, and in *In re Bonner*, 151 U. S. 242; or made conditional as in *United States v. Petkos*, 214 Fed. Rep. 978; *Billings v. Sitner*, 228 Fed. Rep. 315, and *Ex parte Romano*, 251 Fed. Rep. 762; or coupled with other disposition of him as in *In re Gut Lun*, 84 Fed. Rep. 323, and

Ex parte Gyl, 210 Fed. Rep. 918, 924. It more nearly resembles the kind of an order which an appellate tribunal enters on reversing and remanding the judgment of a lower court upon finding error in its proceedings. But the proceeding before a committing magistrate in international extradition is not subject to correction by appeal. See *Fong Yue Ting v. United States*, 149 U. S. 698, 714; *Sternaman v. Peck*, 80 Fed. Rep. 883. Compare *United States v. Perreira*, 13 How. 40, 48; *United States, Petitioner*, 194 U. S. 194. And it is ordinarily beyond the scope of the review afforded by a writ of *habeas corpus* to correct error in the proceedings. *In re Kaine*, 14 How. 103, 122; *Ex parte Harding*, 120 U. S. 782, 784; *Charlton v. Kelly*, 229 U. S. 447, 457; *Henry v. Henkel*, 235 U. S. 219, 228. The order resembles, also, that which might be entered by a district judge after having reviewed the proceedings taking place before a United States commissioner, under the court's authority to assume control in the preliminary stages of matters of which it has the final decision under the law. *United States v. Berry*, 4 Fed. Rep. 779, 781; *In re Chin K. Shue*, 199 Fed. Rep. 282, 284; *The Mary*, 233 Fed. Rep. 121, 124; compare *Todd v. United States*, 158 U. S. 278, 282; *United States v. Allred*, 155 U. S. 591, 594; *In re Perkins*, 100 Fed. Rep. 950, 954. For an extradition commissioner is an officer of the court which appoints him. See *Grin v. Shine*, 187 U. S. 181, 187; *In re Grin*, 112 Fed. Rep. 790, 794. But here the extradition commissioner had certified his findings to the Secretary of State before the petition for writ of *habeas corpus* was filed. Whether, for this reason, the time had not passed when the court could correct the action of its commissioner, except upon reopening of the proceeding before him with the consent of the Executive (see 6 Ops. Atty. Gen. 91),—or, in other words, whether in such a case the power of the court is not limited to ordering the discharge of the prisoner either absolutely

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or conditionally except upon a rehearing before the commissioner with the consent of the President—this question, we are not required to consider at this time. For the proceeding ordered by Judge Grubb had not been taken; nor had the power sought to be exercised by him been challenged. Nor need we consider whether Judge Grubb, having found that a proper hearing had been denied by the committing magistrate on the two affidavits, might have heard the case *de novo*, and have determined thereon whether the prisoner should be discharged; compare *Chin Yow v. United States*, 208 U. S. 8, 13; *Whitfield v. Hanges*, 222 Fed. Rep. 745, 746; *United States v. Williams*, 193 Fed. Rep. 228; for Judge Grubb did not undertake to do so. The prisoner remained under the authority of the District Court (see Mr. Justice Nelson in *In re Kaine*, 14 How. 103, 133-4); and as the writ of *habeas corpus* had not been disposed of there so far as concerned the detention on two of the three affidavits, the decision below on that branch of the case was not final.

Second: A case may not be brought here by appeal or writ of error in fragments. To be appealable the judgment must be not only final, but complete. *United States v. Girault*, 11 How. 22, 32; *Holcombe v. McKusick*, 20 How. 552, 554; *Bostwick v. Brinkerhoff*, 106 U. S. 3, 4; *Grant v. Phœnix Ins. Co.*, 106 U. S. 429, 431; *Dainess v. Kendall*, 119 U. S. 53; *Covington v. Covington First National Bank*, 185 U. S. 270, 277; *Heike v. United States*, 217 U. S. 423, 429; *Rexford v. Brunswick-Balke-Collender Co.*, 228 U. S. 339, 346. And the rule requires that the judgment to be appealable should be final not only as to all the parties, but as to the whole subject-matter and as to all the causes of action involved. *Louisiana Navigation Co. v. Oyster Commission*, 226 U. S. 99, 101; *Sheppy v. Stevens*, 200 Fed. Rep. 946. The seeming exception to this rule by which an adjudication final in its nature of

matters distinct from the general subject of the litigation, like a claim to property presented by intervening petition in a receivership proceeding, has been treated as final so as to authorize an appeal without awaiting the termination of the general litigation below, *Central Trust Co. v. Grant Locomotive Works*, 135 U. S. 207, 224; *Williams v. Morgan*, 111 U. S. 684, 699; *Trustees v. Greenough*, 105 U. S. 527, has no application here. Nor have cases like *Forgay v. Conrad*, 6 How. 201, 204, and *Thomson v. Dean*, 7 Wall. 342, 345, where decrees finally disposing of property which the successful party was entitled to have carried into execution immediately, were held appealable, although certain accounts pursuant to the decree remained to be settled. Here a single judgment deals with the detention on three affidavits. Only one branch of the case has been finally disposed of below, therefore none of it is ripe for review by this court.

Third: In what has been said we must not be understood as recognizing the British Consul General as the party entitled to appeal from a decision in Collins' favor. For the writ of *habeas corpus* was directed to the United States marshal who held Collins in custody and the marshal was the party in whom rested the right to appeal, if Collins prevailed on final judgment. See *Charlton v. Kelly, supra*.

Both appeals are

Dismissed for want of jurisdiction.